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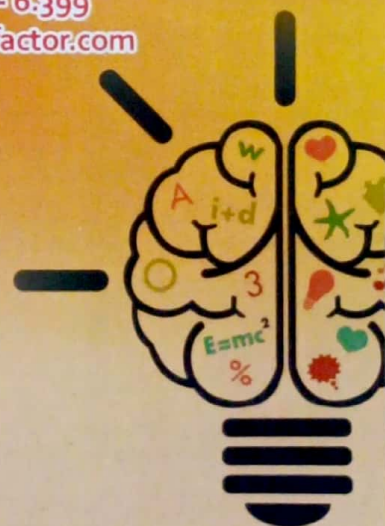
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16. Human Rights: Indian Constitution & Safeguards

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Introduction

The Universal Declaration of Human Rights on 10 December 1948. Human Rights do not exist in a vacuum, inevitably, they are formulated by individuals and state and they are implemented by states themselves. However, a number of national, regional and international bodies exercise responsibility for overseeing the monitoring of human rights and ensuring that states comply with obligation. Several aspects of human rights are covered by Parts III and IV of the Indian Constitution. It is considered as a Social Document. Some of the Articles are worth mentioning. 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.” Article 15 states, “(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall on grounds only 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.” Article 16 states that “(1) there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.”

Key Words: Human Rights, Indian Constitution, Safeguards, Deprived elements

Human rights under Indian Constitution

The Constitution of India was drafted by the Constituent Assembly on 9th December, 1946 and after long discussions and debates by the foremost legal luminaries and thinkers of our country the draft Constitution was finally adopted on 26th November, 1949. The framers of the Indian Constitution were influenced by the concept of human rights and guaranteed most of human rights contained in the UDHR. The UDHR contains Civil and Political as well as Economic Social and Cultural rights. While Civil and Political rights has been incorporated in Part III of Indian Constitution i.e.

Fundamental Rights, as Economic Social and Cultural rights have been incorporated in Part IV of the Constitution i.e. Directive Principles of States Policy. The inclusion of important provisions of UDHR in the Constitution of India has given them supremacy over all other statutory provisions.

Everyone has the right to take part in the government of his country, directly or through freely chosen representatives [Article 21. (1)] Article 21 of the Indian Constitution is of widest amplitude and several unremunerated rights fall within it. These rights are:

- Right to go abroad
- Right to privacy
- Right against Solitary Confinement
- Right against Bar Fetters
- Right to Legal Aid
- Right of Speedy Trial
- Right against Hand Cuffing
- Right against delayed execution
- Rights against Custodial violence
- Rights against Public hearing
- Rights to Health Care or Doctor's assistance
- Right to shelter

Other rights which have been held to emanate from Article 21 are the following:

- Right to know
- Right to Compensation
- Right to Release or Rehabilitation of Bonded Labour
- Rights against Cruel and Unusual Punishment
- Rights of inmates of protective homes

The Supreme Court started reading the some of the provisions in Part IV of the Indian Constitution i.e. Directive /Principles of States Policy into the Fundamental Rights. The 42th Amendment Act 1976 had inserted Article 48A in Part IV of the constitution requiring the state to endeavor to protect and improve the environment and to safeguard the forest and wild life of the country. The Supreme Court interpreted the right to life in Article 21 to mean life free from environmental pollution.

Constitutional Safeguards to Human Rights: Article 19 states that “(1) All citizens shall have the right –

- a. To freedom of speech and expression;
- b. To assemble peacefully and without arms;
- c. To form associations or union;
- d. To move freely throughout the territory of India;

- e. To reside and settle in any part of the territory of India; and
- f. To practice any profession or to carry on any occupation, trade or business.”

Article 20 states, “N person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than the which might have been inflicted under the law in force at the time of the commission of the offence.” Article 21, the most important article of all in the Fundamental Rights section, states that” no person shall be deprived of his life or personal liberty except according to the procedure established by law.” All of the above mentioned Articles of the Indian Constitution come under the Fundamental Rights guaranteed by the State. Article 32 provides that, if any of the above Fundamental Rights are violated, one has the right to call on the Supreme Court directly thus the above-mentioned articles form the bedrock of human rights, guaranteed by the Indian Constitution. In addition there are a number of other rights, which come under the “Directive Principles of the State Policy.” Though these rights are not enforceable like the Fundamental Rights, they provide guidelines for the States to follow these principles in legislating and implementing laws. These rights focus on the following:

- Providing adequate means of livelihood. [Article 39(A)];
- Equal pay for equal work for both men and women. [Article39(d)];
- Adequate protection of the health and strength of workers, men and women [Article39(e)];
- Equal justice and free legal aid [Article 39(a)];
- Living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. [Article 43] ;
- Free and compulsory education for children [Article 45];
- Increasing the level of nutrition and the standard and the improvement of public health. [Article 47];
- Prohibiting the slaughter of cows and calves and other milk and draught cattle [Article 48]

Institutional Safeguards to Human Right

In India, the Judiciary plays a leading role in protecting and enhancing human rights. Broadly speaking, the judiciary plays the following major functions in protecting human rights. First, it ensures that the human rights are not violated legally. Article 32 of the Indian Constitution confers the enforcement of fundamental rights on the Supreme Court. Under Article 32, every citizen has right to request the Supreme Court has the power to issue orders or writs in

the nature of habeas corpus, mandamus, prohibition and certiorari, whichever may be appropriate. This power to issue writs has been used extensively by both the Supreme Courts and the High Courts.

Human Rights Commissions and Reservation Safeguards

Human rights violations, whether perpetrated by state actors or non-state entities, are being countered by three major agencies; the National Human Rights Commission and the State Human Rights Commission funded by the State, Non-Governmental Organisations and the Judiciary.

A. The National Human Rights Commission (NHRC)

The National Human Rights Commission (NHRC) was established by legislation—the protection of Human rights Act 1993. The main objective of the NHRC is to protect human rights by inquiring into specific complaints of human rights violations and to provide human rights education. Though the NHRC is instituted by the government, its autonomy has been ensured through the following provision. First, the Chairperson and the members of the NHRC re appointed by the President of India from persons recommended by a committee, which consists of the Prime Minister, speakers of the House of the People, Leader of the Opposition in the Lower and Upper Houses, Minister of Home Affairs and the Deputy Chairman of the Council of States. Second, the member of the NHRC can be removed only by the order of the President of India on the grounds of proved misbehavior or incapacity. Third, the members have a fixed tenure — they are elected for a period of five years. The main functions of the NHRC include the following'

- Inquiring suo moto or on petition presented to it by a victim or any person on behalf of Victims on complaints of human rights violations;
- Reviewing factors that curtail the enjoyment of human rights acts such as terrorism and giving 'recommendations';
- Reviewing the provisions in the Indian Constitution that protect Human Rights;
- Studying international treaties and documents and ensuring their effective implementation;
- Undertaking research to promote human rights in India;
- Promoting human rights awareness. In the last eight years of its existence, the NHRC has Issued a number of directives and guidelines to the government, especially in the following

Areas

- Misuse of police power, especially arbitrary arrests; Elimination of child labour;
- Compulsory education;
- Setting up human rights cells in state and city police headquarters;
- Prison reforms;
- Caste and communal violence.

B. State Human rights Commissions

The Protection Of Human Right Act, 1993 also provides for the establishment of State Human Rights Commissions (SHRC). The SHRC is to consists of Chairperson, who has been a Chief Justice of a High Court, one member who is/has been a Judge of High Court, one member who is/has been a district judge in that State and two members from persons having knowledge of human rights. The SHRCs are to inquire into matters related with List II and III of the Seventh Schedule to the Indian Constitution.

C. National Commission for Minorities (NCM)

The National Commission for Minorities was set up in 1992 under the National Commission for Minorities Act. The objectives of the NCM include:

- Evaluating the progress of the development of minorities in India;
- Monitoring the working of the safeguards in regard to minorities provided in the Constitution and in laws enacted by Parliament and the State Legislatures;
- Recommending effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State governments;
- Focusing on specific complaints regarding deprivation of rights and safeguards of minorities;
- Suggesting appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments.

D. National Commission for Women (NCW)

Se up in January 1992 under the National Commission for Women Act, 1990, the National Commission for Women consists of a Chairman and five other members. The main functions of the NCW include the following:

- Examining issues relating to the safeguards provided for women under the Constitution and other laws;
- Providing reports to the Central Government on the working of safeguards provided for women under the Constitution;

- Recommending measures to implement the safeguards effectively by the Union or any State;
- Taking up cases of violation of the provisions of the Constitutions and of other laws relating to women with the appropriate authorities;
- Looking into complaints relating to the deprivation of women's rights; non-implementation of laws enacted to provide protection to women and also to achieve the objectives of equality and development; and noncompliance of policy decisions, guidelines or instructions aimed at mitigating hardship and ensuring the welfare of and providing relief to women.

E. National Commission for Scheduled Castes and Scheduled Tribes

The national Commission for Scheduled Castes and Scheduled Tribes was originally formed as the Commission for Scheduled Castes and scheduled tribes in 1978. Its functions include the following:

- Monitoring issues related to the safeguards provided for SC/STs under the Constitution;
- Enquiring into specific complaints with respect to the deprivation of rights and safeguards of SC/STs;
- Reporting to the President regarding the working of these safeguards;
- Recommending measures that should be taken by the Union or any state for the effective implementation of these safeguards and other measures for the protection, welfare and socio-economic development of SC/STs.

Conclusion

The subject itself is so wide there is no appropriate conclusion as Human Right is concern. No doubt these rights has been incorporated in Indian Constitution, However, it is still a failure with events of human rights violation making headline in one form or the other. The violation of Human right may be in different form. We should be ashamed with rising issue of honor killing, corporal punishment, custodial dealth, fake encounter killing, etc. If we want to give the exact interpretation of term Unity in Diversity it is the responsibility of very Indian to respect rights of another individual irrespective of race, colour, sex, caste, language, religion, political or other opinion, national or social origin, property, birth or other status. To erase human right violation may be impossible but it always possible to bring changes if we take individual responsibility on our own shoulder.

With the increase in literacy, even in rural areas and with the reduction of poverty and hunger, with changes being brought in laws and procedures in investigation, trials of human

rights violations, with decentralization and devolution of economic and political power from centre to the state, from state to districts and from district to villages-there will be reduction of human rights in all forms. It is obvious, though this process is slow-but steady and before long the society will reach situation where there will be “All Human Rights for all.”

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