



STUDY ON HUMAN RIGHTS IN INDIA - AN OVERVIEW

Dr. Raman Nehra

H. No. 123A/14, Kirpal Nagar, Rohtak-124001, Haryana (India)

Email: mehra39@gmail.com

Abstract: Human rights are the rights relating to overall development of every individual. Every citizen as well as non-citizens carries their rights wherever they go. Simultaneously human rights are essential for the overall development of every individual. In the constitution of India various provisions are there that reflect the basic rights which are also known as fundamental rights. But the thing is that there are some specified as well as some unspecified fundamental rights. But the most important thing is that in India there is Protection of Human Rights Act, 1993 with an objective of protecting human beings from violations of Human rights to prevent and punish any gross violation on human rights. India is the largest democracy of the world. Being a democratic country we have to protect our basic rights of the people. Government of India has also given due consideration to the recognition and protection of human rights. The Constitution of India recognizes those rights of the people and yields them for every individual's concern. Then also violation of Human rights still exist by other forms like forced labour, forced prostitution, immoral trafficking, low wages, gender discrimination etc.

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Introduction:

"Human rights are rights inherent to all human beings, regardless of their race, gender, nationality, religion or any other status. We are all entitled to Human Rights without discrimination." With a majority of votes, India was elected to the United Nations Human Rights Council, demonstrating its international significance. Human rights are a set of principles that guarantee people the right to live in peace, harmony, dignity, liberty, and equality, regardless of their social labels (sex, creed, caste, gender, nation, and so on). In society. Because there is a core norm that applies to every human on the earth, this ensures the growth of individuals and communities. Human rights are a significant aspect of international law, including declarations, treaties, acts, regulations, and rules that are integrated into state laws. Human Rights can be defined as universal, absolute, interconnected, and unbiased. Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian sub-continent over a very long stretch of time. As Jawaharlal Nehru writes, there is "an unbroken continuity between the most modern and the most ancient phases of Hindu thought extending over three thousand years." The rights of man have been the concern of all civilizations from time immemorial. "The concept of the rights of man and other

fundamental rights was not unknown to the people of earlier periods." The Babylonian Laws and the Assyrian laws in the Middle East, the "Dharma" of the Vedic period in India and the jurisprudence of Lao-Tze and Confucius in China, have championed human rights throughout the history of human civilization. The Indian concept perceives the individual, the society and the universe as an organic whole. Everyone is a child of God and all fellow beings are related to one another and belong to a universal family. In this context, Mahatma Gandhi remarks, "I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore my service to India includes the services of humanity."3

What are Human Rights?

Human Rights are those minimal rights which every individual must have against the State or other public authority by virtue of his being a 'member of the human family', irrespective of any other consideration. The concept of human rights is as old as the ancient doctrine of 'natural rights' founded on natural law, the expression 'human rights' is of recent origin, emerging from (post-Second World War) international Charters and Conventions. It would, therefore, be logical to start with the concept of natural rights, which eventually led to the formulation of 'human rights'.

1. In the beginning, the right of man as a legal or moral concept appeared in the form of natural rights. The natural rights were derived from the nature of man for these are inherent in the nature of man and form part of his intrinsic nature. It means there exist in the nature of universe certain objective moral principles which can be perceived by the man by the application of his reason and self determination. There are so many theories round the corner about the nature, meaning and concept of natural rights, which ultimately culminated into the idea that an individual has right upon society or against society which the society must recognize as human rights. This concept of human rights can be termed as updated version of the traditional 18th Century concept of the right of man.

2. The expression human right is of recent origin emerging after the end of the Second World War. The outcome of the Second World War had given rise to the serious concern towards humanity because humanity suffered lot in this era, and as a consequence tremendous developments have been made in the field of human rights. Universal Declaration of Human Rights (UDHR) was adopted by the United Nations General Assembly in 1948 and subsequently large number of international human right instruments and covenants came into existence. (1) The U. N. Charter, 1945. (2) Universal Declaration of Human Rights, 1948. (3) International Covenants of 1966 i.e. Civil and Political Rights and Economic, Social and Cultural Rights. (4) European convention for protection of Human Rights, 1953.

The United Nations in 1948 adopted the first global text, the Universal Declaration of Human Rights (UDHR), with more than 50 governments as supporters. Human rights, it was asserted, are a worldwide concern that can be both connected and absolute. The document is not legally enforceable, but it might be considered customary international law.

The Universal Declaration of Human Rights (UDHR) served as a framework for the establishment of the European Convention on Human Rights (ECHR), which was enacted in 1950 with the goal of protecting the human rights of individuals living in countries that are members of the Council of Europe. The "Convention on the Protection of Human Rights and Fundamental Freedoms" was signed by more than 40 countries, including the United Kingdom. The Human Rights Act of 1998 was later implemented as municipal law in the United Kingdom. Before the human right act 1968, The European Court of Human Rights heard cases involving human rights violations. The Human Rights Act of 2000 offered citizens in the United Kingdom essential rights and freedoms, which were included in the nation's municipal laws through the European Convention on Human Rights.

This Act covers the following topics:

- Cases involving human rights will be brought directly before a British court.
- To carry out public functions by public authorities.
- The new laws that will be enacted must be in accordance with the rights of the people. International treaties and conventions assure the implementation of human rights, which are then modified into domestic laws by individual countries. There are particular laws being adopted to defend human rights, as well as specific authorities dedicated to protecting human rights and ensuring that the laws enacted are adequately enforced.
- The International Covenant on Economic, Social, and Cultural Rights (ICESCR) was signed by India, and these were the rights mentioned in the constitution as Fundamental Rights, while the rights of the Economic and while the constitution was being drafted, the UDHR's Human Rights provisions were taken into account, and the Supreme Court of India recognised them, allowing citizens to seek direct relief from the Supreme Court or a High Court under Article 32 or Article 226 of the constitution if their Fundamental Rights were violated. Social Councils (ECOSOC) were mentioned in the directive principles of state policy (DPSPs).

Origin and Development of Human Rights in India

The Buddhist doctrine of non-violence in deed and thought says Nagendra Singh, "is a humanitarian doctrine par excellence, dating back to the third century B.c."~ Jainism too contained similar doctrines. According to the Gita, "he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even-minded in pain and pleasure and patient" is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, 53 truth, freedom from anger, renunciation, aversion to fault-finding, compassion to living being;, freedom from covetousness, gentleness, modesty and steadiness -the qualities that a good human being ought to have.⁵ The historical account of ancient Bharat proves beyond doubt that human rights were as much manifest in the ancient Hindu and Islamic civilizations as in the European Christian civilizations. Ashoka, the prophet Mohammed and Akt~ar cannot be excluded from the geneology of human rights.⁶

Ancient Hindu Law of Human Rights Scholars who have spent long time in lucubration on the Hindu "Dharmasastras" and the "Arthasastras" and other legal treatises of the past have discovered an amazing

system, which, inter alia, regulates the duties of Kings, judges, subjects and judicial as well as legal procedures. The central concept is Dharma, the functional focus of which is social order. The message is "Dharma" as the supreme value, which binds kings and citizens, men and women. Human rights gain meaning only when there is an independent judiciary to enforce rights. Here, the Dharmasastras are clear and categorical. 'The independence of the judiciary was one of the outstanding features of the Hindu judicial system. Even during the days of Hindu monarchy, the administration of justice always remained separate from the executive. It was, as a rule, independent both in form and spirit. It was the Hindu judicial system that first realized and recognized the importance of the separation of the judiciary from the executive and gave this fundamental principle a practical shape and form. The case of Ananthapindika v. Jeta reported in the Vinaya-pitaka,' is a shining illustration of this principle. According to it, a Prince and a private citizen submitted their cases before the law court and the court decided against the Prince. The Prince accepted the decision as a matter of course and as binding on him. The evolution of the principle of separation of the judiciary from the executive was largely the result of the Hindu conception of law as binding on the sovereign. Law in Hindu jurisprudence was above the sovereign. It was the "Dharma." The laws were then not regarded so much as a product of supreme Parliaments and Legislatures as at present. Certain laws were regarded as above all human authority. Such, for instance, were the natural laws, which no Parliament, however supreme, could abolish. "The State was not sacerdotal, nor even paternalistic; even the King was subject to the law, as any other citizen and the 'Divine Right' of Kings known to western political science was unknown to India. On the whole, the aim of the ancient Indian State may be said to have been less to introduce an improved social order, than to act in conformity with the established moral order." [Luty is not a tyrant, but a symbol of dignity to be discharged with affirmative joy. The realization of this vast perspective is assured in the Dharmasastras by the wonderful scheme or coordination of conduct adapted to different conditions, status and situations of life. The scope of dharma takes in its vast sweep human rights as well.

HUMAN RIGHTS IN INDIA

Our country was one of the original signatories to the International Covenant on Civil and Political Rights and therefore the framers of Indian Constitution were influenced by the concept of human right and recognised as well as guaranteed most of the human rights which were subsequently embodied in the International Covenant 1966. The Preamble of the

Indian Constitution reflects the inspiring ideals with the specific mention of "dignity of the individual".

HUMAN RIGHTS UNDER THE CONSTITUTION OF INDIA

The Constitution of independent India came into force on 26th January. The impact of the Universal Declaration of Human Rights on drafting part III of the Constitution is apparent. India has acceded to the Universal Declaration of Human Rights as well as to the subsequent International Covenants of Economic, Social and Cultural rights and Civil & Political Rights adopted by the Central Assembly of the United Nations.

Fundamental Rights enshrined in Part III of the Constitution have emerged from the doctrine of natural rights. Fundamental Rights are the modern name for what have been traditionally known as Natural Rights. The Natural Rights transformed into fundamental rights operate as a constitutional limitation or a restriction on the powers of the organs set up by the Constitution or the State action. Judicial Review, Justiciability or Enforcement became an inseparable concomitant of fundamental rights. As no right of freedom can be absolute, limitations have been imposed to each fundamental right in the interest of securing social justice. Enforcement of fundamental rights can even be suspended or prevented in emergency.

Directive Principles enshrined in Part IV of the Constitution epitomise the ideals, aspirations the sentiments, the precepts and the goals of our entire freedom movement. The wisdom of the forefathers of the Constitution was justified in incorporating non-justiciable human rights in the concrete shape of the directive principles.

WIDER IMPLICATIONS OF RIGHT TO LIFE

Our Apex Court has been expanding over the decades, the dimensions of Art 21 i. e. Right to Life & Personal Liberty. In *F. C. Mulla vs. The Administrator, Union Territory of Delhi & others* (1981 2 SCR 516) Justice Bhagwati observed: "We think that the right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms freely moving about and mixing and mingling with fellow human beings.....Every act which offends against or impairs human dignity would constitute deprivation of this right to life and it would have to be in accordance with reasonable, fair and just procedures established by law which stands the test of other fundamental rights."

The expression 'life' does not mean animal existence. Right to life guaranteed under Art. 21 of the Constitution have certain positive aspects and as such subject to well-organised limitation apart from obligation of the State not to deprive a person of his life except in accordance with a valid law.

It is heartening to note that the Supreme Court has now been widening the scope of Art. 21, though earlier in *A. K. Gopalan vs. State of Madras* (AIR 1950 SC 27), the Court had taken very narrow view of Art. 21. Life in its expanded horizons today includes all that give meaning to a man's life, including his tradition, culture and heritage, and protection of that heritage in its full measure would certainly come within the encompass of an expanded concept of Article 21 of the Constitution.

RIGHT TO PRIVACY AS A PART OF ART. 21

Initially the Supreme Court refused to allow the right to privacy as a part of Art. 21 in *Kharak Singh vs. State of U.P.* (AIR 1963 SC 1295). In this case the petitioner's name was recorded in a History sheet maintained by the police on the basis of accusations and the movement of the petitioner was under surveillance. Ayyangar J. speaking for the majority struck down clause (b) of regulation 236 of the U. P. Police Regulations authorising "domiciliary visits" as violative of Article 21 of the Constitution as the said administrative regulations were not backed by authority of any legislation and rejected rest of the challenge to the above referred regulations. In the majority judgement, Ayyangar J. held as under:

"As already pointed out, the right of privacy is not a right guaranteed under our Constitution and therefore the attempt to ascertain the movements of an individual which is not merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by part III."

The Supreme Court has, however, subsequently modified its views & has now recognised 'right to privacy' as a part of Art. 21. In *State of Maharashtra and another vs. Madhukar Narayan Mardikar* (AIR 1991 Supreme Court, 207) the delinquent police officer was dismissed on the ground that he had visited the hutment of one Banubi on the night of 13th November 1965 all alone in police uniform and had tried to ravish her. There was some evidence on record that Banubi was unchaste woman. In the above referred judgement, Ahmadi J. speaking for the Bench of the Hon'ble Supreme Court observed as under:—

"She was honest enough to admit that dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person as and when he wishes.... She is equally entitled to the protection of law. Therefore, merely because she is a

woman of easy virtue, her evidence cannot be thrown overboard."

In *Smt. Saroj Rani vs. Sudarshan Kumar Chadha* (AIR 1984, SC 1962) the Supreme Court over ruled the Judgement of High Court of Andhra Pradesh in the case of *T. Sareetha vs. Venkata Suppiah* (AIR 1983 Andhra Pradesh, 356) and upheld constitutional validity of Section 9 of Hindu Marriage Act, 1955 providing for remedy of restitution of conjugal rights. The Andhra Pradesh High Court had declared that the said section was a savage and barbarous remedy violating the right to privacy and human dignity guaranteed by Art. 21 of Constitution. The learned Judge of High Court of Andhra Pradesh referred to the Scarman Commissions report in England recommending abolition of the remedy. The Supreme Court of India upheld Constitutional validity of section 9 of the Act on the ground that the object of Section 9 of the Act was to preserve the institution of marriage. The Hon'ble Mr. Justice Sabyasachi Mukarji speaking for the bench observed that Section 9 of the Act served a social purpose as an aid to the prevention of break up of marriage and must be viewed in its proper perspective.

RIGHT TO A CLEAN ENVIRONMENT AS A RIGHT TO LIFE

In the *Doon Valley Case* (AIR 1985 SC 652) Art. 21 was invoked to prevent the degradation of the Mussoorie Hills due to the mining operations there. The Court held that Art. 21 included in its sweep a right to clean environment and that the permanent assets of the mankind cannot be allowed to be exhausted in our generation. In *M. C. Mehta vs. Union of India* (AIR 1988 SC 1037) the Supreme Court reiterated the fundamental right to a clean environment and held that pollution treatment plant is a pre-condition of the existence and continuation of an industry. It observed; "Just like an industry which cannot pay minimum wages to its workers, cannot be allowed to exist, a tannery which can not set up a primary treatment plant cannot be permitted to continue." In the *Oleum Gas Leak Case* (AIR 1986 SC) the rule of strict liability was applied without exception to a polluting undertaking employing hazardous process of manufacture. This was again a writ under Art. 21 of the Constitution.

IMPORTANCE OF HUMAN RIGHTS

- Human rights ensure that everyone has access to fundamental necessities such as food, shelter, and education.
- Human rights will safeguard society's most vulnerable members.
- The right to freedom of speech and expression is guaranteed under human rights.

- People's religious freedom is protected by human rights.
- People have the right to education under human rights.
- Human rights safeguard the environment for the benefit of society and the individuals who live there.
- Human rights serve as a common baseline for ensuring that people's rights are protected.

CURRENT SITUATION IN INDIA RELATED TO HUMAN RIGHTS.

When it comes to protecting an individual's dignity and liberty, the role of the judiciary is critical. It is the defender of individual human rights since it not only protects but also interprets the scope of fundamental rights. In some of the significant instances, judicial pronouncements or interpretations have evolved through time and enlarged the scope of Human Rights in India.

According to a US study, India has a number of serious human rights issues, including arbitrary and unlawful murders, limits on freedom of expression and the press, corruption, and tolerance of religious freedom abuses. But, many organizations in India are working on the development of Human Rights and the National Human Rights Commission is one of them which is helping people in India related to human rights violations.

The commission was founded in 1993 by the Public Health Reform Act of 1993. The Paris Principles were adopted for the promotion and protection of human rights, which affected national institutions and led to the establishment of the National Human Rights Commission in India. The rights of the underprivileged and excluded are emphasized by the NHRC. As a result, it takes all necessary steps to ensure that no individual's human rights are violated.

NHRC works on all the aspects related to human rights like educating people, making people aware of the laws and procedures related to human rights, safeguards the rights to health care, and also clean the environment, Not just the NHRC but many other NGOs and organizations working on these the main aim of these organizations is to educate people about their rights and come forward if anything is happening or if anyone violates their rights.

COMPARISON OF HUMAN RIGHTS IN INDIA WITH UNITED STATES

In the United States, the First Amendment guarantees press freedom, whereas, in India, it is inherent in Article 19(1)(a), which guarantees freedom of speech and expression. In India, petitioning the Supreme Court is a fundamental right, although, in the

United States, it is the government that is petitioned (in the United States, the term "government" has a broader sense and includes not only the executive, but also the highest levels of government). The right to property was abolished as a fundamental right in India in 1978, but it is still a fundamental right in the United States since no property can be taken away without just recompense.

In the United States, the cybercrime legislations are different for every state and are made unique to suit the needs of each state. The law in the US started from THE COMPUTER FRAUD AND ABUSE ACT OF 1984 which was altered from time to time to meet new issues of malicious codes, trojan horses, etc. after this alteration the government was enabled to punish any person who broke the cyber law with the intention to cause harm without the knowledge of the owner of the computer. In 2002 the US government passed the cybersecurity enhancement act which helped the law agencies to give severe punishment for an individual who committed a computer crime and caused loss of monetary and emotional value. These punishments may vary from 5 to 20 years or may extend to life imprisonment but India also lacks cyber law. Through this, we can really say that India needs to relook the laws related to all aspects which are dangerous to human privacy.

CONCLUSION AND SUGGESTIONS

Many of the rights found in the Indian Constitution were derived from the US Constitution, as is common knowledge. In addition, many Supreme Court decisions have incorporated some of the express rights in the US Constitution. However, it should be noted that the US Constitution is quite strict, as seen by the fact that it has only been altered 27 times in the last 225 years, whereas the Indian Constitution has been amended 70 times in the last 70 years, demonstrating its flexibility.

So, India should need rigid laws as with each new advancement in society, there are a plethora of new ways in which humans are exploited and their rights are infringed. Out of the requirements and necessities of society, new human rights interpretations are introduced by future generations. Especially in cyberspace, India is lacking in those sectors, and with the increment of technology cybercrime is increasing, so this needs to look. People should be taught and aware about human rights through campaigns or through education from elementary school, more NGOs should be opened by the government, they should also monitor and report breaches, and deep research on human rights is necessary so that we can improve all areas and know the opinion of people in which sections the rights of humans are being violated.

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