

HUMAN RIGHTS IN INDIA IMPLEMENTATION AND VIOLATION

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ABSTRACT

This article traces the evolution, framework and challenges in the human rights regime in India. It begins with India's pre-modern ethical traditions of dharma and ahimsa and reflects on the way anti-colonial struggles have reframed rights. Drawing on the data of NCRB, it also shows the gaps between the guarantees on paper and lived realities on ground. It concludes by proposing a multi-pronged approach to cap the implementation deficit for the regime of rights to function in a coordinated manner.

KEYWORDS: *Human rights, Fundamental Rights, Indian Constitution, Caste Atrocities, Custodial Violence, Implementation Deficit*

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INTRODUCTION

Rights can be defined as those conditions of social life without which no man can seek to be himself at its best (Laski). Rights performs two integral roles- a protective role and a promoting role. In its protective role, a right is an individual's claim against the state. It protects an individual from arbitrary actions of the state. Legally put, a right is a legal claim that constitution or any other statute grants a citizen or any other individual. In its promoting role, right guarantees those condition of life that helps an individual develop his or her personality to the fullest. Rights are the essence of democracy as they empower an individual and allow them to develop fully. Rights are associated with equality in the present times and establish a level playing field among the rich and poor, men and women, and various others social groups. Rights can simply be defined as the freedom to act in a chosen manner without any restrictions put by others like individual, state and society. Rights are simply claims of an individual on the state and society to lead a good life. Rights have dual functions- to protect an individual from arbitrary actions of the state and secondly promote the interests of individuals. The legal and moral percepts known as rights protect people from the acts that can jeopardize their safety or restrict their liberties. These can include human rights, civil rights and other legal rights. People's precise rights differ by nation and legal system but they frequently serve as the cornerstone of an equitable and just society. The social justice system that the state and its laws are founded upon produces rights (Barker). A legal right is an interest that is widely acknowledged and safeguarded by the law, it is a duty to respect the rights and any breach of it may result in legal wrong (Almond). A right is also seen as assertion that the state and society agree upon and uphold (Bosanquet). Dworkin in his book 'Taking Rights Seriously' calls rights as trumps. It means that rights of an individual should be given preference over to rights over any other considerations. Hohfeld gives four interpretations of rights as the claim or entitlement that enforces duties on others, rights as liberty to pursue what one wants to pursue, rights as power of individuals that has the capacity to put limits on the power of the state and the interpretation of right as immunity against state and society.

ORIGIN OF THE CONCEPT OF RIGHTS

Rights can be regarded as a contemporary concept. In medieval times, there was a theory of divine rights of king. It was later replaced by theory of natural rights of man. In its origin, rights have always been regarded a concept that is anti statist because rights symbolizes the restrictions that are placed on the state. It limits not only the power of the state but also limits the power of society. Philosophers such as Plato and Aristotle debated the concepts of justice and individual rights in ancient Greek philosophy. They prepared the way for ensuing philosophical debates on the topic. In the contemporary context, rights are generally regarded to be as the concept of liberal democracies. Marxists consider rights as bourgeoisie concept. According to the Marxists, rights are always based on false consciousness that interest of man continue to always be in conflict with interests of society. Hence, in countries with socialist foundation, emphasis is given to duties more than rights. Magna Carta, 1215 is regarded to be as the founding document in the history as well as evolution of rights. The charter from the middle ages set forth the legal rights of the nobility and restricted the authority of the monarch. Philosophers of the enlightenment, including Thomas Hobbes, Jean Jacques Rousseau and John Locke rose to prominence in the 17th and 18th centuries. These intellectuals wrote a great deal about individual liberty, natural rights and social contract. According to the American declaration of independence, which was written in 1776, everyone is entitled to certain unalienable rights like life, liberty and pursuit of happiness. This had a big influence on how contemporary conceptions of rights evolved. 1789 witnessed the French revolution. The concepts of liberty, equality and fraternity were established in part by the French declaration of man and citizen in 1789. The civil rights movement of 1860 has accepted rights to be the major pillar for rebuilding of the societal structure (singh, 1986). The universal declaration of human rights of 1948 has set about a comprehensive list of fundamental human rights. This document has played a very significant role in shaping the contemporary discourse on human rights. Presently, the rights of the marginalized groups such as LGBTQ+ community, rights of women engaged in the profession of sex work and of those involved in the manual scavenging industry, are being highlighted in the current context. Right to die is another important component of human rights that is a debatable issue worldwide. Over the time, the idea if rights has developed and expanded and still it continues to be a key topic in debates about ethics and law across the globe. It is noteworthy that comprehension and acknowledgement of rights may differ among cultures and historical settings and the idea of rights continue to be shaped by ongoing discussions in modern society.

HUMAN RIGHTS

The term human rights can be referred to as essential, inalienable freedoms and rights to which every person is entitled merely by the virtue of their humanity. These are the rights that are natural in the sense that these rights are indivisible, universal and intrinsic in human nature. These rights are needed for dignified human life and enjoyed irrespective of social, political and other considerations. These are unalienable belonging to all people and interconnected. The fundamental tenet of human rights is that every person deserves respect and dignity, irrespective of their gender, ethnicity, nationality or any other attribute. The concept of human rights originated after the Second World War. It is based on the experience of atrocities committed by Nazi Germany on the Jews. Till World War II, the monistic theory of sovereignty ruled the world and it was a theory that was also considered sacrosanct. Hence, the scope of the international community was limited in the domestic affairs of the state. (Heywood). Nonetheless, it became clear that reducing state sovereignty and making room for the international community's role in the defense of human rights is very essential. In case, the state violates the rights of its citizens, the onus to protect the same directly comes on the international community. The universal declaration of

human rights adopted on 10th Dec 1948, the international covenant on civil and political rights, 1966 and the international covenants on social and economic rights of 1966 constitutes the international bill of rights. Eleanor Roosevelt was a driving force behind the creation of the universal declaration of human rights. She said “where do human rights start, in tiny locations near their homes where they are invisible on any global map. However, these are the worlds of the individuals- his home, neighborhood, school and a place of employment- a factory, farm or office.” Ideas from the 17th century philosopher John Locke impacted the evolution of human rights. He maintained that everyone is naturally entitled to their own life, liberty and property. Human rights and its development have also been discussed by economist and Nobel laureate Amartya Sen. Human rights; according to him are the claims of human beings against society and against other human beings within in society. The capabilities approach, developed by philosopher Martha Nussbaum emphasizes what people are actually capable of doing and becoming. She draws an integral connection between human rights and capabilities. Henry Shue, a political philosopher also contributed to the discourse on human rights by formulating the idea of basic rights. According to him, fundamental rights are those that shield people from grave danger, like the freedom from torture and the right to food. Jack Donnelly also describes human rights as standard of minimal justice, thereby establishing a relationship between justice and rights and reflecting on the interconnectedness of both the concepts. According to him, the rights in principle can be applied to any individual, subjective to normative assumptions about what rights all humans equally posses. According to Immanuel Kant, a man is different from animal because he possesses an intrinsic unique quality of reasoning. Therefore, accordingly, all humans deserve to be treated equally and with utmost respect and dignity. According to the theory of human rights, rights should be available to all irrespective of caste, class, creed etc and therefore, whether constitution of a country recognizes it or not, it will be assumed that people posses human rights’. In his celebrated work ‘Universal Rights in Theory and Practice’, Jack Donnelly defines human rights as timeless, unchanging and absolute. In the ‘Future of Human Rights’, Upendra Baxi focuses on the concerns and interests of people in struggle and communities of resistance, their histories and myths that are ingrained in them. He examines the significance of universal declaration of human rights and focuses on human rights of women, postmodernist critiques of UN and the effects of globalization on human rights movements.

HUMAN RIGHTS IN INDIA: EVOLUTION

The rights of man have always been a focal point of different civilizations around the world. The concept of dharma of the Vedic period, the legal precedents of Lao Tze and Confucius in china, the Assyrian and Babylonian laws defended human rights throughout human civilizations history. In the Indian context, the Buddhist doctrine of non violence has served as humanitarian doctrine par excellence (singh, 1986). The concept of human rights in India ties the concept of divinity to the human rights theory. The Indian conception establishes a link between individual, society and universe as an organic whole. The evolution of human rights in India has been a very complex and multifaceted concept. India has a rich philosophical end ethical tradition that upholds the rights and dignity of all people. Ancient Indian philosophy is the source of ideas like dharma and ahimsa. Several philosophical and ethical traditions have laid down the groundwork for evolution of human rights. A key idea in traditional Indian philosophy and religion has been towns, guilds and local self governing organizations offered a type of community based governance by granting them a share in the autonomy. Emperors like Akbar enacted crucial laws in protection of dharma which included the concepts of morality, obligation and righteousness. It placed a strong emphasis on showing kindness, compassion and respect to others which is arguably one of the earliest examples of human rights in Indian context. Another idea central to evolution of human rights is the concept of Ahimsa or non violence. This idea was greatly expounded by Mahavira, the founder of Jainism and later expanded by Mahatma

Gandhi. This principle reflected the consideration for the rights and well being on other humans and a complete avoidance of harm to other living beings. There were verses in some ancient texts like Rig-Veda that acknowledged the crucial principle of gender equality. Certain philosophical traditions promoted the idea that all people are equal, regardless of their social standing. Dharma served as the cornerstone of ancient Indian legal theory and the ideal of the human rights law. It focused upon creation of socio legal framework free from remnants of battles, abuses and suffering. It served as the template for global legal framework (baboo, 2016). The discourse around the development of human rights in India has always mentioned King Asoka. (madaan, 2017). By taking numerous steps to ensure that everyone has equal rights, brotherhood and happiness, Asoka is hailed as the greatest exponent of civil rights in India. (ali, sawan, 2021). The Mauryan empire stood as the beacon of light in the evolution of human rights. During Chandragupta Maurya's rule, Kautilya outlined the laws of punishment the ideas in Arthashastra, one of the most important political treatise written in the ancient period further inspired enactment of laws in relation to the human rights in India. (ali, sawan, 2021). The concept of human rights as understood in the cotemporary sense did not exist in medieval India. But certain developments before the evolution of modern concept of human rights have existed. 'Adl' in Islamic jurisprudence emphasized the principles of justice, morality and fairness. In few medieval societies, there existed the concept of religious minorities and promotion of religious toleration. In the Islamic era, the conception of human rights was relegated to the policies of Akbar. His religious policy, Din e Ilahi promoted the idea of secularism and toleration. (madaan, 2017). Bhakti and Sufi concepts further intensified the idea of human rights by focusing on the equality of all persons irrespective of their class, gender, creed, background by launching a staunch attack on the idea of caste system and promoting the notion of oneness with god. The modern understanding of human rights in India began with the advent of British. Given the background of the great degree of atrocities committed by the British forces on the Indians, the people of India become well aware of the rights they were missing on like right to life, right to equality, freedom of speech and expression. The first real demand appeared in the form of the constitution of India bill of 1895. The fight for the rights of the native people was also reflected in number of resolutions that were passed in the two year span from 1917 to 1919. Mrs. Besant commonwealth of 1925 also was a reflection of the rights demanded by Indians which included freedom of people, right to have elementary education, freedom to pursue, preach, and propagate religion of their choice and other similar freedoms in line. Resolution passed in 1927 called objectives resolutions declared to secure explicit fundamental rights for the citizens of the country. (madaan, 2017). The modern understanding of human rights in India is an amalgamation of both the developments in the past and also the constitutional provisions, the international commitment and the changing societal norms which represents the dynamism of the concept of human rights in the Indian context. Indian constitution itself guarantees certain important fundamental rights to its citizens enshrined in various articles. India at the same time has also been signatory to the various international human rights conventions like the universal declaration of human rights of 1948 and the international covenants of civil and political rights along with international covenant of social, cultural and educational rights, ratified by India in 1976. (madaan, 2017). These commitments have always reflected India's standing on the issue of human rights. Apart from civil and political rights being at the centre of discourse of human rights in India, India has also incorporated social and economic rights. Laws like protection of women from domestic violence act, maternity benefits act and the recent Supreme Court judgments on the profession of sex trade and women reservation bill reflect India's commitment towards notion of gender equality as well. The interests of the downtrodden and the marginalized sections of society are reflected in the laws enacted by legislature like the scheduled caste and scheduled tribe prevention o atrocities act of 1989. India's contemporary conception of human rights is the result of a dynamic interaction between the country's changing needs as a diverse population, international commitments and constitutional principles.

IMPLEMENTATION OF HUMAN RIGHTS IN INDIA

India's human rights implementation is a result of the intricate interactions between institutional and legal frameworks, civil society activism and public awareness. India's commitment to human rights is reflected in it being signatory to universal declaration of human rights. The Indian constitution has always been greatly influenced by the UN's declarations. Large number of fundamental rights that have been guaranteed in part III of the Indian constitution have been influenced and taken from the universal declaration of human rights. these includes rights like equality before law inspired by article 7 of the declaration, prohibition of discrimination taken from article 7 of the declaration again, freedom of speech and expression taken from article 19 and so on. The Supreme Court noted in *Kesavnanda Bharti v. state of Kerala* case 1973 that UDHR is not a legally binding document but it is reflective of India's understanding of human rights at the time its constitution was adopted. In another significant judgment of Supreme Court in *Railway Board v. Mrs Chandrima das* case of 2000, it was observed that UDHR represents an international code of conduct. India also adopted two of the most crucial declarations on human rights, ten years later than when these were adopted in 1966- the international covenant on civil and political rights and the international covenant on economic, social and cultural rights. India ratified both the covenants in 1976 reflecting its commitment towards its conception of human rights. India understood that these rights are very crucial in protecting Kantian's human dignity. In *Jabalpur v. Shukla* case of 1976, it was observed that the goal of declaring certain rights as fundamental was solely to give protection to these rights against unlawful infringement by all the three branches of the government i.e. legislature, executive and judiciary. These rights have been recognized as human rights or fundamental rights by the Supreme Court of India. Right to privacy is another extremely crucial right adopted by Indian constitution. One arena reflecting a very important right i.e. child rights was also incorporated from Universal Declaration of human rights into the Indian constitution. It was in the form of convention on the rights of child of 1989. Child as the centre of the human rights discourse was adopted late both by the international community and India. Concerns about children's health, especially the children belonging to the underprivileged sections of the society still remain relevant. India has always had a long history of child labor and their subjugation in the form of extreme exploitation they are subjected to. The employment of children as slaves still prevails on a large scale in India with 150 million children approximately employed in risky and illegal occupations. The constitution's article 24 forbids the employment of minors under the age of 14 in hazardous mines, factories. Additionally, revision for protecting children from exploitation and from mental and economic abuse is found in article 39 and article 45 of the Indian constitution. The National Human Rights Commission has been established by the protection of human rights act 1993. It is regarded to be as the apex body that is entrusted with the task of promoting and protecting human rights. This act also provides for establishment of state human rights commissions and human rights courts at district level in every state. International law statutes have also been incorporated into the domestic laws and various humanitarian laws have been ratified by India like the Geneva convention 1950, genocide convention 1959, committee on the elimination of racial discrimination and convention on the elimination of all forms of discrimination against women. (aggarwal)

FUNDAMENTAL HUMAN RIGHTS INCORPORATED IN THE INDIAN CONSTITUTION

The fundamental rights in the Indian constitution are enshrined in part iii from articles 12 to 35. These are the mixture of natural and legal rights. Civil and political rights are expressly mentioned in it. Through its innovative interpretation of article 21, Supreme Court has made various economic rights also a part of fundamental rights. These rights are fundamental in the sense that they are essential for all round development of human personality. They have been incorporated by the fundamental law of the land i.e. the constitution. The significance of these rights stems from the fact that without these rights, the meaning and scope of the term democracy stands limited. Their main purpose is to impose constraints on the state and establish the Lockean's limited government. (ali, Khanna, 2021). These include- the right to equality from article 14 to 18 which includes two crucial components- equality before law and equal protection of law. Right to freedom from article 19 to 22 includes right to freedom of speech and expression, the right to assemble peacefully, right to form associations and right to move freely throughout the territory of India. Right against exploitation incorporated in article 23 and 24 is the only absolute right available in the Indian constitution. It includes prohibition of human trafficking and it protects children below the age of 14 years from being employed in the hazardous factories and mines. Article 25 to 28 is the right to freedom of religion which includes the freedom to profess, preach and propagate any religion of their choice. Article 29 and 30 includes the right of minorities to establish and administer educational institute of their choice as preserve their culture, language and script. And article 32 of the Indian constitution is what Dr. Ambedkar called as the heart and soul of the Indian constitution as it provides an individual exemplary right to move to the apex court -Supreme Court of India in case of violation of fundamental rights through writs like habeas corpus, mandamus, certiorari, prohibition and quo warranto. (Nariman, 2013). Chief justice Subba Rao observed in *Golak Nath v state of Punjab* case observed that fundamental rights is a synonym for natural rights in the contemporary era. CJI Patanjali Shastri in *Suboh Gopal Bose v state of west Bengal* referred o fundamental rights as the most basic human rights. The conception of human rights however is not limited to specific fundamental enshrined in the constitution, rather it goes beyond that. The umbrella of human rights also cover other rights such as right to privacy, right to human dignity, right against solitary confinement, right against any torture, right against handcuffing right against custodial violence, right against public hanging, right to fresh and healthy environment, right to shelter, right to know, right to inmates of protection homes etc. (singh, 1986) Similarly, human rights have a strong relationship with directive principles of state policies enshrined in the Indian constitution and also fundamental duties in part IV of the constitution.

RELATIONSHIP BETWEEN INDIAN JUDICIARY AND HUMAN RIGHTS

Our Indian legal system is significantly linked to our judicial structure. The judiciary is in charge of interpreting and defending the constitution of India. All the three levels like the Supreme Court, the High Court as well as the subordinate courts and also the remaining two organs i.e. the legislature and executive has the responsibility to act in a way that is not in violation of any fundamental right of the constitution and reflects the greater standing of India's commitment to protection of human rights. Judiciary is essential to maintain the rule of law and to defend the fundamental rights. It was declared in *Ajay Hasia v. Khalid Mujib* by Supreme Court that the judiciary has a great responsibility in defending the human rights. The Supreme Court from time to time, keeping in view the changing social and political circumstances has tried to use its innovative interpretations for expanding the scope of human rights in the Indian context. This can be clearly witnessed in its attempt to widen the ambit of article 21 of the Indian constitution. Thus, judiciary has been at the centre of promoting and protecting human rights in India. (singh, 1986)

WIDENING AMBIT OF HUMAN RIGHTS IN INDIA

The supreme court of India's significant intervention has allowed the scope of human rights in India to expand over time. In an order in May 2022, Supreme Court recognized sex work as a profession and observed that women in the profession are entitled to live a dignified life and must receive equal protection under the law. In 2020, sex work was recognized by the national human rights commission. The Justice Verma commission recognized the difference between women who are trafficked for commercial sexual exploitation and an adult who consents to be the profession of sex work. Going further, in *Budhadev Karmaskar v. state of west Bengal*, judiciary went a step ahead in recognizing the right to livelihood of the sex workers. It widened the ambit of article 21 i.e. right to life, of the Indian constitution by asserting that women in the profession of sex work has the right to live a dignified life. Similarly the transgender persons- protection of the rights act has been a crucial milestone in achieving the life based on dignity and respect for the third gender. With time, rights of manual scavengers have also been upheld by the court of India asserting on the notion of the dignified life. Right to die is another fundamental right that has been covered within the domain of right to life incorporated in article 21 of the Indian constitution with significant guidelines and exceptions to the same. (udogu, 2012)

IMPLEMENTATION OF HUMAN RIGHTS IN INDIA

India has always had a universal as well as exhaustive framework of human rights. It is reflected through the fundamental rights enshrined in the Indian constitution serving as primary legal foundation. Bodies like National Human Rights Commission and State Human Rights Commissions clearly monitors and protects our human rights. Various laws also helps in strengthening the foundation of human rights in India like the protection of the human rights act, juvenile act, right to information act etc. India is a signatory to Universal Declaration of Human Rights which reflects India's commitment towards protection of the human rights discourse, both domestically as well as internationally. In the initial years, India faced harsh criticism for its use of military force to combat terrorism in places like Jammu and Kashmir, the consequences of which lead to grave human rights violation in J&K. It is in this backdrop of its worsening relations with other countries, the protection of the human rights act was enforced. The need to protect human rights at federal and state levels led to the introduction of the act in 1993. The act provides a comprehensive framework to guard human rights by providing remedies to the violations. Section 2D well encapsulates the definition of human rights as rights relating to life, liberty, equality and dignity of an individual that is enforceable in any court of law. The national human rights commission has been established on the foundation of this act. The National Human Rights Commission is the apex body responsible for implementation of human rights in India. It was established under the statute of protection of human rights act, 1993. The Paris principles are a crucial feature of the act that was adopted for the encouragement and safeguarding of human rights. The NHRC serves as quasi judicial body to address human rights violation in India. Similarly, Section 21(1) provides for State Human Rights Commission which is constituted by the state government to monitor the situation of human rights at the state level. The ambit of state human rights commission is limited as compared to the national human rights commission. Section 30 of the protection of human rights act also provides the state government powers to set up human rights courts at the district level with the recommendation of chief justice of the respective state high court. The major objective behind the initiative has been to safeguard the human rights at the grass root level and to ensure the speedy trial of the cases arising o of human rights violation. The incorporation of the international law into the Indian legal system is reflected through the ratification of various important international treaties and conventions like the Geneva Convention of 1950, Genocide Convention 1959, CERD, CEDAW etc. (baboo, 2016)

VIOLATION OF HUMAN RIGHTS IN INDIA

Human rights violation can simply be defined as the actions that infringe upon the rights and freedoms of the individuals. Human rights violation can take place intentionally in some cases. Violations can sometimes be intentionally directed by an agency like state that bears the role and responsibility of protection of human rights in India. State actors like police, judges, government officials, prosecutors use violence as a means to violate the rights of the individuals. Denial of free and fair trial and the provision of preventive detention is also how state practices the violations of human rights. Caste based discrimination against Dalits has also led to grave human rights violation. Since the Indian society is a caste based society, the violence against Dalits, especially Dalit women seems to be on the rise on a daily basis. According to the National Crime Records Bureau, crimes against Dalits have increased by 6% from 2009 to 2018. The atrocities against the scheduled castes have increased by 1% in 2021 as compared to the rate of atrocities in 2020. Communal violence and ethnic violence is on the rise leading to the violation of article 15 of the constitution that prohibits any kind of discrimination among the individuals. Instances of discrimination on the basis of caste, class, gender, ethnicity persist. Police brutality is another extreme form of human rights violation that is on the rise. There have been reports of custodial torture and deaths and also the excessive use of physical force by the police. Freedom of speech and expression that forms one of the most integral fundamental rights in India stands violated in the present times, more than ever. Cases of censorship, threats and violence against journalists are a direct attack on freedom of press and expression. Gender based violations continue to persist in patriarchal Indian society. Despite the provisions and various awareness campaigns, women continue to face violence, discrimination. Human rights violations in India can also be reflected through the infringement of rights of both linguistic as well as religious minorities in India, violation of the right to privacy with the concept of privacy, no more than an illusion, in the present context. Ensuring that the rights of the individuals are respected and protected requires cooperation, advocacy and legal actions to curb the violations of these rights. Resolution of the violations frequently demands the participation of international organizations, nongovernmental organizations as well as government agencies.

CONCLUSION

Prevention of human rights violation is indeed an outcome of a robust legal framework, widened awareness, effective judiciary and the robust involvement of civil society organizations. Strengthening as well as enforcing the human rights law both at the national as well as the international level aligned with a set of standards is a crucial step in prevention of violation of these basic rights. Dissemination of the knowledge of human rights is also crucial for creating a respectful culture. It includes creation of awareness around the basic human rights principles and giving greater autonomy to the law enforcement agency to prevent any kind of violation. Involvement of community members is also necessary. Judiciary must continue to play an active role to hold the perpetrators accountable for human rights abuses through a legally fair and transparent process. Human rights activists as well as other civil society organizations can also play a very crucial role in reporting, monitoring and addressing the issue. Police and security sector reforms are a must to improve the current situation of human rights in India. Along with providing legal protection to the victims of human rights abuses, proper protection and compensation should necessarily be provided to those exposing any such violation and bringing it in the light. Societies can endeavor to stop violations of human rights and promote a setting in which each person's rights and dignity can be rightfully upheld.

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