



Article : Status of Human Rights in India

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Abstract: -

Human being is the beginning and end of every organized society within the state or within the international community. Hence the realisation of human rights should be the goal of every state. The subject of human rights has been evoking public interest all over the world. The interest in the subject is not only confined to the people of upper circle concerned with the affairs of the state. But a large number of people in various walk of i.e., academics lawyer and social workers have been taking active parts in promoting the cause of human rights.

The interdependence of human right democracy and development is broadly considered to be valid. For Etienne Richard M., human rights expert and UN consultant from Congo human rights are a “timeless measure by which to evaluate the moral legitimacy of a given political order.” According to him parliamentary democracy based on the rule of law is the sole form of government which can adequately project human rights. Democracy does not mean merely majority rule; it mean majority rule coupled with human rights. In the absence of human rights democracy is not possible. Liberty, freedom of dissent, rule of law and all other matters which go to constitute human rights are necessary so that democracy should be maintained. This was so clear after the World War II that United Nation was found with two objects, not with one; the first object was to prevent war in the future; and the second object was to protect and promote human rights. The entire history of the World War II indicated the importance of human rights without which no democracy was possible, no freedom was possible.

As the colonial state frequently trampled upon human rights and civil liberties of the people, the Indian National Movement constantly strove to defend and uphold these values. In fact, overthrow of British imperialism was seen by the leader of national movement as a precondition to the development of India along democracy and civil liberties lines where people would be able to defend their basic rights. Evidently, the human rights that the people of India enjoy, in however

limited measure, is a legacy of our national movement. The importance that was accorded to the issue of civil liberties and human rights by our national movement can be easily grasped by a statement of Mahatma Gandhi in 1922: "We must make good the rights of free speech and free association. We must defend these elementary rights with our lives. Liberty of speech means that it is unassailed even when the speech hurts, Liberty of press can be said to be truly respected when the press can comment in the severest term upon and even misrepresent matters. Freedom of association is truly respected when assemblies of people can discuss even revolutionary projects." In 1939, Gandhiji stated: "Civil liberty consistent with the observance of non-violence is the first step towards Swaraj. It is the foundation of freedom. There is no room there for dilution or compromise. It is the water of life. I have never heard of water being diluted."

After independence, theoretically India has impressive record of rights given to its citizens. The constitution of India contains fundamental rights violation of which is neither possible by the executive nor the legislature. The government of India ratified International covenant on civil and political rights and another covenant on economic, social culture rights during the period of Janta party. However, in practice, India's record in the field of human rights is not satisfactory. The first two decades of our constitution was the golden period for the defend and promotion of human rights. But in June 1975 emergency rule was declared in India by Mrs. Indra Gandhi and the fundamental human rights like liberty, equality, freedom of thought expression, freedom of assembly and association were suspended. The laws of preventive detention were heavily used and about one lakh political leaders were arrested and detained without any trial. After termination of emergency rule a glorious period for the defence and promotion of human began.

However, the subsequent period in India is pregnant with blatant violation of human right. Punjab and Kashmir have been the rampant. In November 1995, Mr. Jaswant Sing, Akali human rights activist, pointed out: "In Punjab during the period from 1984 to 1994 about 50,000 persons have been unceremoniously cremated by the police." Amnesty International in its report repeatedly pointed out India for violation of human rights by giving examples. The persons taken in the police custody disappear. The conscience of democrats is shocked when it is said that some person are killed in police encounter and all the injuries are in the back of these persons. The apathy on the part of the government makes right to life a dead letter for the person taken in the police custody.

In view of all these, an attempt has made In this research paper the human rights position in India specially the efforts made of project and promote human rights by the government of India, the judiciary the National Human Rights commission and non-governmental human rights organisations. It must be borne in mind that to research human rights issues in India is considerably difficult as the India government has consistently prohibited independent human rights organisations from investigating allegation. These groups include Amnesty International, Human Rights Watch-Asia, the International Red cross, the British parliamentary Human Rights Group and even Rapporteurs (India is obliged to permit access under the conditions of ICCPR). Because of this refusal the truth behind allegations is difficult to ascertain. Worse Still, the India government has consistently refuted many allegations that it permits violations, and it has, unconvincingly, stated that all those found to have perpetrated abuses have quickly and sufficiently punished. In India human rights civil liberties and democratic rights are used interchangeably and are taken as synonymous in their basic approach or general parlance. Hence the questions of human rights civil liberties and democratic rights are interconnected with each other the human rights indicate the broader aspects of rights, i.e, basic and minimum rights of the human beings. It is concerned to both natural rights and other rights, through a standard definition of human rights is yet to be theorised. It may be said to be those fundamental rights to which every human being is entitled in all parts of the world by virtue of being born a human being regardless of any consideration arising out of sex, race, colour, religion, majority or minority position in a society. These rights are needed to establish the dignity of human beings as human beings. In fact, no sustainable development is possible without promoting democracy and without respect for human rights.

The area of human right is very vast and expanding. Apart from the enforcement of fundamental rights in the Indian context, it also contains such economic rights as right to health, freedom from hunger, women's rights etc. In addition to the traditional classification of civil and political rights, economic, social and cultural rights were added to it in 1966. Among the new human rights, mention be of peace, development, environmental protection and the benefits stemming from the common heritage of mankind etc. The new human rights are also known as the third generation human rights. Additional human rights such as human rights to compensation resulting from natural disasters such as floods, cyclones, volcanoes, earthquakes etc. continue to be proposed. With the progress of civilisation and the unfolding of many earlier invisible or remotely visible areas of mankind's development, new dimensions of human rights are still emerging.

The modern concept of human rights as evolved by the United Nations transcends the national boundaries and it is a 'catch word' for all the countries.

The concept of human rights has drawn the attention of social workers, academics, philosophers, lawyers and politicians for ages. In the twenty first century, the concept of human rights has become a part of social and political consciousness of informed people and public opinion. There is always concern that there should not be any affront from any quarter to the human dignity. At the time when universal declaration of Human rights was drafted, many of those involved began with the assumption that human rights were clear-cut concept on which there was widespread agreement. The whole idea behind the Universal declaration thus was that rights spelled out therein would indeed be Universal and they would apply to all people. This fundamental principal is under debate now. There are several factors, which challenge universality like interdependent and interrelated nature of all rights, dogmatic approaches, the absence of respect for pluralistic diversity etc.

There is no consensus regarding the meaning of the term human rights. The concept of human rights has been defined in various ways to convey that human rights are essential for human development. Very often human rights are equated with natural rights. Dr. Narendra Singh has stated that human rights are "those fundamental rights to which every man or women inhabiting any part of the world should be deemed entitled merely by virtue of having been born a human being." Justice Durga Das Basu has defined human rights: "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... through the concept of human rights is as old as ancient doctrine of natural rights founded on natural law, the expression human rights is of recent origin, emerging from (post-second World War) international charter and conventions..."

Human rights centre around human dignity. All human rights are derived from the worth dignity and sanctity of the human person. These rights are common to all human beings living in the world irrespective of race, caste, sex, religion, nationality etc. In the word of first secretary General of the United Nations: "Freedom from fear could be said to sum up the entire philosophy of human rights."

The constitution of India has a rich content of human rights. The preamble to the constitution promises to secure to all citizens: "Justice-social economic and

political, liberty of thought, expression, belief faith and worship; equality of status and of the opportunity; and to promote among them all fraternity assuring the dignity of the individual..." Part III of the Constitution of India contains certain justiciable rights called the fundamental rights. While part IV contain certain non-justiciable rights i.e., right to be given effect by the state legislation, but both parts of rights have same purpose to achieve what has been promised by the preamble. Parts III

And IV of the constitution embody human rights and fundamental freedom.

All the rights covered under part III of the constitution may not refer directly to human rights. Yet they have drawn inspiration from the United Nations Universal declaration of Human Rights. The constitution of India has incorporated various Articles of the UN Universal Declarations of Human Rights. Subhash Chandra Khare points out; "The fundamental rights incorporated in the constitution of India have close similarity with the United Nations Universal declaration of Human Rights in form and content." Although the rights enshrined in part IV of India constitution are non-justiciable, the states cannot violate them in making laws or administrative policy in view of the mandatory provision laid down in Article 37 of Indian Constitution. In other words, the state is under a constitution obligation to give effect to the social, economic and cultural rights enshrined in part IV while making laws for administrative policy. The state can not commit a breach of his obligation, in case breach of such duty the court can prevent the state from committing such a breach.

In June 1995, while delivering his presidential address at a function held at Bangalore, the former Chief Justice of Supreme Court of India, A.M. Ahmadi said; the constitution of India has made it possible for he county to play significant

role in the implementation of human rights despite the absence of legal literature on the subject." He added; "The constitution makes it possible for the country to guarantee the right to life, the most fundamental human right, not only to all citizens but to all human beings.

The proposal for National Human Rights Commission was carried in Human Rights Commission Bill which was introduced in the Lok Sabha on May 14, 1993. The commission was ultimately established on Oct 12, 1993. The commission was headed by Justice Ranganath Mishra. Article 12 of the protection of Human Rights

Act described the functions of commission. Its primary function is to look into the complaints of human rights violation or abatement thereof or negligence in the prevention of such violation by a public servant. Intervene in any proceedings involving allegation of violation of human rights with the approval of such court, visit any jail, review the safeguards provided by or under the constitution or any law, review the acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measure, study treaties and other international instrument on human rights. The commission also undertakes and promotes research in the field of human rights, spreads human rights literature among the people; encourages the efforts of nongovernmental human rights organisations etc.

The NHRC has urged all states and Union Territories to constitute State Human Rights Commission and notify a court of sessions to be a Human Rights Court in each district as envisaged by Sections 21 respectively of the protection of Human Rights Act of 1993. The NHRC submits annual report to the Centre government and it is placed before each house of the parliament. Comprehensive powers have been given to the NHRC for the performance of its functions. It has all the power of a Civil Court including the power to summon and enforce the attendance of witnesses, discovery and production of any document, calling for the production of any public records etc.

In spite of its structural and procedural imperfections and other shortcomings, the initial dynamism and zeal that has been manifested by NHRC is certainly praiseworthy. At the national and international level, it is one of the most effective commission which has established its credentials as a statutory independent body. The United Nations asked NHRC in India about its willingness to lend its expertise in establishing such commission in other countries particularly in the Asia Pacific region. Arun Kumar Mishra advocate of Supreme Court, pointed out: "In most of the developed countries such commissions have only been appointed for protection of minorities. Very few countries in the world have Human Rights Commission. Most of them have very weak records. India's record is noble one."

Thus, the services rendered by the NHRC to project and promote human rights are quite satisfactory. However, it should be borne in mind that the magnitude of problems faced by the people of India is also enormous and almost unsolvable and the report of the commission also acknowledges this.

The last resort to project human rights is to approach Judiciary. The contribution made by the Supreme Court of India in safeguarding the human rights of the people is very significant. Initially, the attitudes of judiciary in India towards the directive principle of state policy were not favourable and it had nullified several important legislation embodying socio- economic reforms. However, with the passage of time there has been a shift in the attitudes of the India judiciary towards social- economic rights claimed in part IV of the India Constitution. Justice Bhagwati observed; “The directive principles of state policy enjoyed a very high place in the constitutional scheme and it is only in the framework of socio- economic structure in directive principles that fundamental rights are intended to operate, for it is only then that they can become meaningful and significant for the millions of our poor the people who do not even have seen necessities of life and are living below the poverty line or level.”

The Supreme Court of India has been attempting to elucidate the scope, amplitude and mode of operation of its power of judicial review especially under Article 21 in one of the India constitution. While explaining the scope of Article 21 in one of the Judgements, the Supreme Court said that every individual has the right to live with dignity. It will not be correct to think that some of the basic economic rights are more claims or aspirations not human rights as they cannot be enforced.

India Judiciary’s pursuit of public interest litigation is also praised by Pakistan’s Chief Justice Iftikar M. Chaudhary. He said; “In a more comprehensive way public interest litigation was adopted in court in India. Early in 1980s, the Court in India were poised to entertain cases of public interest litigation and issued appropriate directions to redress grievances and grant relief to the poor section of society.” Similarly, Justice Bhagwati said that India Judiciary has played a highly activist role in redressing human rights violations brought to its notice by NGOs. In a nutshell, we can say that whatever has been achieved in India in the field of human rights is because of the alert and active role of judiciary. We must bear in mind what Martin Luther said; “Injustice anywhere is a threat to justice everywhere.”

The role of the non-governmental organisation in the field of human rights has always been very important. In fact, it is not recognized that much of the initiative for the development of concept of human rights came from non- governmental human rights organisations. The protection of Human Rights Act, 1993 requires the National Human Rights Commission to encourage the efforts of

non-governmental organisations working in the field of human rights. No duty is more essential for the commission if it to fulfill its responsibilities, for NGOs are its natural allies, stemest critics and indispensable partners. No field of activity of the commission now remains insulated from NGOs, whose advice has also been sought on way to make the commission more effective. The commission receives number of public interest complaints from NGOs.

At the international level, amnesty International has been playing unique role. Its reports have high credibility. There was a time when Amnesty International did not take up the cases of the victims of tyranny if they indulge in Violence. For example complaint about mental torture and persecution made by George Fernandese while in prison during emergency in 1975-76. The amnesty International did not plead his case his supporters participated in violence. Asia watch is another important non-governmental organisation at international level to defend and promote human rights.

The global trend towards rights awareness had led to proliferation of NGOs and movements of human rights all over the world. In independent India, a civil liberties movements of which had been active in opposing human right abuses under the colonial rule of the British, re-emerged to raise concerns about state atrocities against left wing political activists particularly in West Bengal and Andhra Pradesh. The first Human Rights Non-governmental organisation in India, the India Civil Liberties Union (ICLU) was formed in 1936. The importance of ICLU lies in the fact that it contributed to an understanding of what human rights meant: the rights to oppose the government. This understanding served its purpose well in the colonial period, and continues to influence the nature of human rights organisations up to today.

The non-governmental human rights organisation have been very active to see that proper actions are taken by the government, proper laws are enacted and they are implemented in a proper manner. The world conference on Human Rights held at Vienna in 1993 has also recognized the significant role of the NGOs in the promotion and protection of human rights. The conference appreciated their contribution to increasing public awareness of human rights issues, to the conduct of education, training and research in this field and to the promotion and protection of all human rights and fundamental freedom.

Significance: - Keeping in view the Importance and popularity of the subject in today's world, I have endeavoured to focus my attention on the origin and development of human rights. An earnest effort has been made to discuss the constitutional provisions dealing with human rights of people in India. Further special efforts made of project and promote human by government of India, the judiciary the National Human rights commission and NGOS.

Scope: - presently there is a widespread acceptance of the importance of human rights in the international structure because it has legal moral and political bearing. Human rights are legal because it involves the implementation of rights and obligations mentioned in international treaties. It is moral because human dignity and it is political in the large sense of the world.

Methodology: - The research paper attempts to explain the concept of human rights and seeks to examine the role of non-governmental organisations and judiciary in India in protecting and promoting human rights. It highlights the provisions in the constitution of India and out how far they are in conformity with the Articles of UN universal Declaration of Human Rights.

In order to these aspects, I have adopted the standard methodology generally followed by the social scientist particular political scientist. The present study is an explanatory descriptive and analytical in nature and based upon primary and secondary sources. For the collection of data I have mainly relied upon the report of government as well as non-governmental organisation, books, journal magazines and newspapers etc.

Conclusions: -

(1) The violation of human rights are committed despite there is a broad range of democratic institutions and comprehensive constitutional and legal framework for the protection of human rights in India.

(2) All human rights are derived from the worth dignity and sanctity of the human person. These rights are common to all human beings living in the world irrespective of race, sex, religion wealth and nationality.

(3) The Government of India established the National Human Rights commission on September 29, 1993 to be watchdog for observance of human rights.

(4) The role of Judiciary is significant, it in acted as a true promoter and protection of human rights of the people and tried its best to save them from exploitation and in human treatment.

(5) The role of non-governmental organisation has always been important, it remind government to keep their promise in order to give practical shape to goals enshrined in various national and international conventions on human rights.

(6) At present people are more assertive and react better then what the did in the past.

(7) The state of human rights in India would improve provided we remain sensitive to the importance of human rights and realize that without human rights no democracy and no progress is possible.

Recommendations: - Freedom from fear could be said to sum up the entire philosophy of human rights. It is for the people of the world to join hands with the people of India in global task of liberating all the people from any sense of fear and promoting cause of democracy and human rights which go hand in hand. The world has been undergoing a big change and India should prepare itself to meet the challenge. Globalisation is no longer a matter of choice, it is inevitable and it would have incredible effects on the country's socio-economic freedom. The process of globalisation can not be changed the emphasis should be on restructuring our society for the survival of our country and civilisation.

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