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THE CONSTITUTIONAL GOVERNANCE - HUMAN RIGHTS



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Short Profile

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ABSTRACT:

Notwithstanding its short comings, the human rights discourse has become a powerful tool for enforcing accountability in governance in India. Human rights have not only expanded vertically to ensure their protection and promotion during the interaction of states with all actors but also developed horizontally, becoming the basis for good governance and interaction even among the citizenry. Human rights have come to acquire a certain degree of legitimacy in the interaction of states in the international arena, an example of which may be the universally recognized right to freedom from torture.¹

KEYWORDS

Constitutional Governance, human rights, protection and promotion.

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INTRODUCTION :

Rights have become powerful tools to compel states and non-state actors to ensure that their obligations are fulfilled. Even multinational corporations and other business enterprises are increasingly brought into this framework by imposing human rights obligations on their functioning. Human rights NGOs have become more active and vibrant. While globalization has resulted in numerous instances of impoverishment, simultaneously there has been a globalization of human rights advocacy by NGOs. Public spirited individuals and institutions engage more easily and are able to develop strategies and methods for creating standards and seeking accountability. The Use of the internet and the development of a transnational civil society in global interaction have helped the cause of human rights as violations are no longer confined to national jurisdictions but have acquired international significance². The quick flow of information and the possibility of shaming both by the governments of various states and international civil society, including the media and human rights NGOs, have indeed served as a mild deterrent against abuse.³

In the Indian context, since independence, significant efforts have been made to strengthen the legal, constitutional, and institutional framework to protect and promote human rights. This work has been supported by an active and sensitive judiciary, in particular the Supreme Court, through numerous judgements dating from the 1980s limiting the powers of government, enforcing accountability of the police and custodial institutions, while simultaneously expanding the notions of freedom and liberty to include civil and political as well as economic and social rights. These rights were developed by invoking a broad and purposive interpretation of fundamental rights, in particular Article 21 of the Constitution. The courts recognized the need for non discrimination and non – arbitrariness in decision – making through expanding the various provisions of the constitution to give effect to various aspects of freedom. Even the Directive Principles were used to give meaning to rights guarantees.⁴

The formation of the National Human Rights Commission (NHRC) in India in 1993 and the creation of various State Human Rights Commissions (SHRCs) have raised certain social expectations. The work of some SHRCs is encouraging to the extent that human rights have been made a parameter for assessing governance at the state level and accountability of the executive has been sought to be ensured. But the task of human rights enforcement in India, as in other places, is gigantic for any one institution to achieve. It will remain an ongoing struggle. The more support it gets from the various civil society actors, such as NGOs, public – spirited individuals, and the media, the better are the chances it can deliver on the promises of ensuring the protection and promotion of human rights. Violations committed by the law enforcement machinery in India have been taken up by National and international human rights NGOs and also addressed through some useful interventions of the Supreme Court, various high courts, the NHRC, and the SHRCs. Some of these violations have been addressed by granting compensation to victims and, in certain cases, pursuing disciplinary action against erring officials.⁵

Realising the role of law in social engineering, the Supreme Court has expanded the rights jurisprudence to include a variety of civil, political, social, and cultural rights. The suffering of the Indian citizenry became the focus of judicial discourse and constitutional empowerment became the vehicle of human rights development. The judiciary has played a direct and important role in governance so as to ensure that other wings of government discharge their constitutional obligations in a suitable

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manner.

The activist role of the judiciary is not always appreciated. At times, it is subject to criticism on the grounds that it is interfering in the affairs of the executive. However, the judiciary has not shied away from its responsibilities and remains an institution that enjoys tremendous moral legitimacy and constitutional status to intervene in various human rights issues. It is important to recognize that the role of the judiciary in upholding the constitution should not be over emphasized.

Constitutions at their best may provide the political and institutional venue for promoting a rights discourse. They are also written at a time when momentous political changes take place in a country and the framers objectively attempt to transform society. Constitutional guarantees cannot ensure human rights are protected, unless they succeed in engaging the democratic processes in society, an empowering function that should be the goal of constitutionalism. It is important that there are independent democratic institutions that function effectively in ensuring that the governance system adheres to the principle of rule of law and the constitution.

Constitutionalism should be understood to encompass all such institutions. It is a principle that encompasses a variety of political theory ideals, demonstrating a frame work of governance that is based upon human rights, fundamental freedoms, and human dignity.

Constitutionalisation of human rights creates a theoretical framework for their protection and from it flow the various legal, judicial, democratic, and institutional mechanisms that ensure it. The judiciary is able to best perform its constitutional functions only when the independence of other democratic institutions is guaranteed and the government adheres to certain principles of constitutional governance. Human rights and constitutional freedoms are too important for the judiciary to be their exclusive guardian, and most liberal constitutions typically do not envision that.

Further, the formal mechanisms for the protection of human rights through the constitutional apparatus and their enforcement by the judiciary can fail, particularly when these institutions operate under limitations. There should be further space provided for democratic dissent and resistance to intrusions on human rights. This space is also typically addressed by liberal constitutions both in rights guarantees and democratic commitments. It should be an autonomous space for citizens to take upon themselves the task of protecting and promoting human rights and fundamental freedoms. It is possible that resistance from citizens can actually serve as a check upon the democratic branches of the government to ensure that human rights are duly protected and that violations of any nature are met with serious criticism in the form of democratic dissent. More importantly, there is a need for people's resistance and movements to ensure the protection and promotion of human rights⁶.

CONCLUDING REMARKS:

While a sound constitutional framework, an independent judiciary, and other democratic institutions are upholding the constitution of India, the principles of constitutionalism have not permeated our political culture. It is here that we have a long way to go in ensuring that human rights, justice, and constitutional empowerment become the sine qua non of democratic governance in India.

1.B.L.Grover: A Documentary Study of British Policy Towards Indian Nationalism, p.11.

2.In Marxist parlance, the congress was dominated by the progressive bourgeois-landlord-rich farmer combine and its ideological representatives, the educated middle class.

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3.Lajpat Rai: Young India, p.156.

4.Philip Woodruff: The Men who Ruled India, Vol.ii, P.176.

5.Quoted in M.R.Palande (ed)., Source Material for a History of the Freedom Movement in India, Vol.ii, pp.848-9.

6.While in England in 1897 Gokhale wrote a letter to the Machester Guardian on 2 July 1897 condemning the behaviour of Plague commissioners at Poona.

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