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Protection of Human Rights in Indian Legal System: A Critical Analysis

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INTRODUCTION

Protection and promotion of human rights have been an agenda for the countries of the world for a long period of time. After the two world wars and the horrendous holocaust, the countries of the world came together to protect and promote human rights vigorously. The establishment of the League of Nations and United Nations shows the international community's concern regarding the promotion and protection of human rights. The Paris Principles of 1993 further asked the countries of the world to adopt National Level Human Rights Commissions and responding to the said principles. India established its National Human Rights Commission in the year 1993. The great Indian civilization has also manifested respect to the basic tenants of human rights. The Indian concept considers the individual, society and the universe as an organic whole. The Indian tradition perceives that everyone is a child of the God and all fellow beings are related to one another and belong to a universal family. The recent degradation of values in the people, increasing rate of violations of human rights against the vulnerable groups of society such as women, children, minorities, elderly persons and Dalits have posed a vehement threat to the national human rights protection mechanisms. Apart from the above mentioned dimensions of human rights violations, there are numerous sectors where human rights violations are being occurred. Here an attempt shall be made to analyze the international and national human rights protection mechanisms, judicial approach and emerging dimensions of human rights in India. Further, it shall suggest some remedial measures for the redressal of various loopholes and limitations in the national system of protection of human rights.

Basic Concept of Human Rights:

The term human right is a dynamic concept. This right is also called natural rights or basic rights or universal rights.. Human Rights are commonly understood as rights to which a person is inherently entitled simply because she or he is a human being. Human Rights are universal and egalitarian in nature. These rights are available to all people irrespective of their caste, creed, sex, region, colour, nationality profession, etc. Though human rights are essential for all round development of the human being, its main purpose is to be upheld the dignity of the human person.

Definition of Human Rights:

Durga Das Basu defines Human Rights as under- "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 caste, color, creed, place of birth, sex, cultural differences, or any other consideration"[1]

The statutory definition of human rights is contained in the Protection of Human Rights Act, 1993. It has defined the term in the following way "Human Rights

1. Available at http://www.himpub.com/documents/Chapter883.pdf (Last accessed on 19th April, 2018 at 6.05 P.M.)

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means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforced by courts in India"

Justice M.H Beg has defined human rights in the following words – "Human Rights imply justice, equality and freedom from arbitrary and discriminatory treatment.[2]

There is a distinction between human right laws and humanitarian laws. Humanitarian laws refer to the international law which aims to protect the people suffering because of international armed conflict. It also attempts to limit the effects of armed conflict by protecting persons who are not participating in hostilities.

Basic Features of Human Rights :

1. Inalienable : Human rights are conferred on human being simply because they are human. These rights are available to all individuals irrespective of their caste, creed, religion, sex and nationality. Human right starts in the womb of the mother and continues even after death of a human being.

2. Essential and Necessary : The moral, physical, social and spiritual welfare of an individual is impossible without human rights. The material and moral upliftment of the people is not possible without human rights.

3. Connected with human dignity: Human dignity is an essential aspect of human rights. To treat another individual with dignity irrespective of his or her caste, sex, religion, nationality signifies respecting the dignity of individuals.

4. Irrevocable : Human rights are irrevocable in nature. They cannot be taken away by state machinery or any authority. In reality, any welfare state cannot survive without ensuring human rights and fundamental freedoms of individuals.

5. Human Rights are not absolute : The society where a man resides always put certain restrictions on the enjoyment of his rights and freedoms. Human rights are those limited powers or claims, which are contributory to the common good. The state imposes certain restriction on the enjoyment of human rights.

International Norms on Human Rights:

Universal Declaration of Human Rights:

The Universal Declaration of Human Rights is an important milestone in the history of human rights protection. The Universal Declaration of Human Rights was drafted by representatives of different legal and cultural backgrounds from all over the world. The Declaration was adopted by the United Nations General Assembly on 10 December 1948 as a common standard of achievements for all peoples and all nations. Article 1 of the Declaration deals with the right to equality. Article 2 of the Universal Declaration of Human Rights relates to freedom from Discrimination. Article 3 relates to one of the most important right to Life, Liberty, and Personal Security. Article 5 provides for freedom from Torture and Degrading Treatment. The right freedom from Arbitrary Arrest and Exile has been ensured under Article 9 of the Declaration.

Article 22 of the Declaration ensures right to Social Security.

International Covenant on Civil and Political Rights:

The International Covenant on Civil and Political Rights was adopted by the United Nations General Assembly on 16 December 1966. It is a multilateral treaty entered into force on 23 March 1976. This Covenant has further elaborated the civil and political rights and freedoms listed in the Universal Declaration of Human Rights. Article 1 of the Covenant recognizes the right to self-determination. The Covenant further recognizes the rights of peoples to freely own, trade and dispose of their natural wealth and resources. Article 2 states about the right to legal recourse when their rights have been violated, even if the violator was acting in an official capacity. Article 3 provides for the right to equality between men and women in the enjoyment of their civil and political rights. Article 6 of the Covenant deals with the right to life and survival. Under Article 7 of the Covenant, freedom from inhuman or degrading treatment or punishment has been ensured. The right to freedom from slavery and servitude has been ensured by Article 8. Article 9 deals with the right to liberty and security of the person and freedom from arbitrary arrest or detention. The freedom from prison due to debt has been ensured by Article 11 of the Covenant. The right to equality before the law and the right to be presumed innocent until proven guilty and to have a fair and public hearing by an impartial tribunal have been ensured under Article 14 of the

2. Jebagnanam Cyril Kanmony, Human rights violation, Mittal Publications, New Delhi, First Edition, 2010 at p. 3.

Covenant. Article 17 of the covenant deals with the right to privacy and Article 26 deals with the right to equality before the law and equal protection of law.

The International Covenant on Economic, Social and Cultural Rights:

The present Covenant together with the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966), make up the International Bill of Human Rights.

Article 1 of the Covenant deals with the right to self determination. It states that all people have the right of self-determination, including the right to determine their political status and freely pursue their economic, social and cultural development. Article 2 calls the State Parties to undertake the steps to the maximum of its available resources to achieve progressively the full realization of the rights in this treaty. Article 3 of the Covenant calls the States to take steps to ensure the equal right of men and women to the enjoyment of all rights in this treaty. Article 6 of the Covenant deals with the right to work. It states that everyone has the right to work; including the right to gain one's living at work that is freely chosen and accepted. Article 7 of the Covenant relates to labour right. It states that everyone has the right to just conditions of work; fair wages, ensuring a decent living for himself and his family; equal pay for equal work; safe and healthy working conditions; equal opportunity for everyone to be promoted; rest and leisure. Article 8 of the Covenant deals with the right to form and join trade unions, the right to strike. Article 9 of the Covenant provides for the right to social security, including social insurance. Article 12 of the Covenant provides for an important right. It states that the right to the enjoyment of the highest attainable standard of physical and mental health. Article 13 of the Covenant deals with the right to free and compulsory education.

Constitutional Perspective of Human Rights :

The founding fathers of Indian constitution were all aware regarding the demand for basic human rights. Yet economic backwardness of the country would make it impossible to immediately satisfy all the aspirations of people. The fundamental rights chapter and directive principles of state policy reflect the basic foundation of human rights in Indian Constitution. The definition "State" under the Constitution of India is as under- "In this part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India." [3]

Article 13 lays down certain restrictions over violations of human rights. This article enunciates judicial review of legislative enactments and executive actions and declares them unconstitutional if they are not in conformity with part III of the Constitution. The Part III of the Constitution of India guarantees six fundamental rights. These are (i) right to equality, (ii) right to freedom, (iii) right against exploitation, (iv) right to freedom of religion, (v) cultural and educational rights, and (vi) right to constitutional remedies

The directive principles of state policy reflect the second generation of human rights. The Directive Principles of State Policy are guidelines for the framing of laws by the government. Keeping in mind the economic conditions of the state, these rights are implemented by the state machinery in a phrase wise manner. These are fundamental to the governance of the country.

Statutory Provisions on Protection of Human Rights:

In compliance of the Paris principles, India enacted the Protection of Human Rights Act, 1993. The National Human Rights Commission, the State Human Rights Commission and Human Rights Courts are established under the Act for the protection and promotion of human rights.

Human Rights Commission:

Sec. 3 of the Act provides that the Central Government shall constitute a body to be known as 'National Human Rights Commission' to exercise the powers conferred upon and to perform the functions assigned to it under the Act. As such the National Human Rights Commission has been established and is functioning from New Delhi. Sec.21 of the Act provides that a state may constitute a Human Rights Commission.

In accordance with the Section 12 of the Protection of Human Rights Act, 1993, the National Human Rights Commission has been inquiring into complaints of human

3. Article 12 of Indian Constitution

rights violation covering broad range of human rights from across the country. The Commission has been taking suo-motu cognizance of human rights violation cases. As of March, 2018, 25526 cases are pending before the National Human Rights Commission. The Commission shall perform all or any of the following functions, namely:-

a) i) Inquiry violation of human rights or abatement thereof or

ii) Negligence in the prevention of such violation, by a public servant;

b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;

c) Visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations thereon;

d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;

e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate measures;

f) Study treaties and other international instruments on human rights and make recommendations for their effective implementation;

g) Undertake and promote research in the field of human rights;

h) Spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars, and other available means;

i) Encourage the efforts of non-governmental organizations and institutions working in the field of human rights;

Some other Acts on Human Rights :

The Protection of Civil Rights Act, 1995- is an Act to make it punishable for preaching and practice of untouchability. The Act prescribes that whoever on the ground of untouchability

- Prevents any person from entering any place of public worship ; or
- Prevents access to shops, hotel, hospital, educational institutions or any public place
- Refusing to sell goods or render service
- Encourage others to practice untouchability shall be punished.

Right to Information Act, 2005 :

Information is power. Right to information Act is a powerful tool of good governance. There can be no freedom, if there is no freedom of speech. Freedom of speech includes free flow of information. Open and free dialogue is possible only when sufficient information is available for further deliberation and discussion. The enactment of RTI Act is one of the finest endeavors of the government of India to strengthen freedom of speech and bring transparency and accountability in the governance. The Act makes it mandatory to the public servants to furnish the information desired by the applicant and prescribes penalties and departmental action in case of failure to furnish the same.

Violation of Human Rights in India :

Here an attempt has been made to analyze the different dimensions of human rights violations in India.

Trafficking of women:

Women trafficking in India have been a serious issue at the time when the government is directing its policy for empowering the vulnerable class. The trafficking of women has led to violation of their rights and dignity. It violates their right to security, privacy, health, education and other basic human rights. The trafficking of women must be curbed as it involves the negation of socio-economic empowerment of women. The NCRB 2016 Annual Report highlights the alarming affairs of human trafficking in India. The report has recorded 918 human trafficking incidents under Indian Penal Code crime head during the year 2016.[4] Under the Immoral Trafficking (prevention) Act, 1956 the number of cases registered during 2016 is 2337.[5]

Child Rape and Human Rights:

The rise in the number of reported cases of rape

4. National crime record bureau, Crime in india,2016, New Delhi, At Page 4

5. Ibid at p. 5

and sexual abuses against children in India shows the sliding of Indian society towards a collapse of humanity and ethics in the political and civil life. The recent alleged rape incidents at Kathua in Jammu and Kashmir and at Unnao in U.P in 2018 has pushed the country towards a national emergency like situation due to its widespread national and international outrage. The UN Secretary General Antonio Guterres reacted the two heinous rape incidents describing them as horrific case and called on the Indian authorities to bring the perpetrators to justice. According to the NCRB data for 2016, incidents of rape of children have increased by over 82% compared to 2015.[6]

Child Rights and Human rights:

Children are the future of any country. The future of the country largely depends upon the well being of the children. The growing incidents of crime against children have been disturbing the very conscience of the nation. The National Crime Records Bureau's report has highlighted the gravity of the problem of violation of child rights. According to National Crime Records Bureau, a total of 79758 cases was reported under the IPC and SLL crimes head of crime against children. Again in 2015, the figure went up to 84189. Further, in 2016, a total of 98344 cases was reported.[7]

Scheduled Caste and Tribe:

The Scheduled Caste and the Scheduled Tribe comprise a substantial portion of our society and they are the most disadvantaged group in terms of socioeconomic development. According to Census Report of 2011 scheduled caste and scheduled tribe comprises about 16.6% and 8.6% of India's population respectively. The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 and the Protection of Civil Rights Act, 1955 are two milestone legislations to safeguard the interest of these two most vulnerable groups of population. The number of cases reported against the Scheduled Casts and Scheduled Tribes under these two Acts has increased tremendously. In 2014, the number of cases reported against the Scheduled Casts and Scheduled Tribes was 10124. In 2015, the number decreased to 6954 and it further decreased to 5963 in the year 2016.[8]

Crime against Senior Citizens :

Senior citizens play a very important role in the social fabric of our society. The nation and society need their enlightenment for strategic and stronger future of the nation. Though they are infirm in body, their strength of experience can act as a lighthouse of policy makers. However, due to adoption of a nuclear family system and busy life schedules of the children, the senior citizens not only feel lonely but also neglected. The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 is the prime law for the protection of senior Citizens in India. The Crime against the Senior Citizens in the year 2014 was 18714. In 2015, it increased to 20532 and in 2016 it further increased to 21410. [9]

Unlawful Detention and Human Rights:

A detention is called as unlawful if it is made without any legal justification. A detention by police without reasonable grounds or a warrant of the court shall be unlawful detention. In order to establish peace, security and buttress the rule of law, police bears a great responsibility to the public as well as to the government. While exercising their functions, police must comply with the provisions of procedural laws and the norms and standard of human rights. However, police are seen abused their power while executing policing functions, such as arrest and detention.

Suggestions :

1. The Definition of Human Rights under the Protection of Human Rights should be made more exhaustive in nature keeping in mind the ever increasing horizons of human rights.

2. The National Human Rights Commission should be given power to enforce its orders like a courts. Its orders are now only recommendatory in nature.

6. Available at http://indianexpress.com/article/explained/ncrb-data-2016-huge-spike-in-rape-of-children-up-by-82-from-2015-up-mp-worst-states-tamil-nadu-new-entrant-4962477/ (Last accessed on 28th April, 2018)

7. Supra note 4 at 186

8. National Crime Records Bureau, Crimes in India, 2016 , at p. 5

9. Ibid at p. XXI

3. The National Human Rights Commission should also entertain complaints which involve alleged incidents of more than one year old.

4. The posts of Chairpersons and the Members of the various state Human Rights Commissions remain vacant for a longer period of time. The State Government must take initiative to fill up the posts of these state level human rights watchdogs.

5. The provision of constituting Human Rights Courts should be implemented by all the State Governments.

6. Article 32 (3) of the Constitution of India should be implemented so as to enable the Subordinate courts to issue writs.

7. A new provision should be inserted in the Act to empower the NHRC to grant compensation and immediate interim relief to the victim or the next of kin of the victim

8. Regional branches of NHRC should be established in each state for the convenience of public and burden free functioning of the Commission.

9. Training and sensitization programme on human rights should be conducted to spread human right education.

10. The human right orientation program should be incorporated in the curriculum of educational institutions.

11. Right to compensation should be made a fundamental right in the part three of the Constitution

12. A separate human rights ministry should be created at both central and state levels for the promotion and protection of human rights.

Concluding Observation :

Human rights demand recognition, realization, promotion and protection of inherent dignity of human being. In spite of having constitutional and plethora of statutory provisions concerning human rights in India, protection and promotion have been a big challenge to the protecting agencies of human rights. Apart from legislative and executive effort, Indian judiciary has safeguarded the fundamental human rights of the citizens in India. The judicial activism and introduction of Public Interest Litigation have contributed significantly to the protection of human rights in India. The judiciary has acted the savior of human rights. Through public interest litigation, various cases involving violation of human rights have been filed before the High Courts and the Supreme Court of India, and justice have been rendered to the victims and their families. Despite the active and vigilant role of the judiciary and the State and National Commissions on human rights to rein and check the ever spiraling crimes against women, children, senior citizens and other vulnerable groups has been a tremendous challenge for the Indian Government. The proper execution of the laws, vigilant judiciary and active participation of the public in the promotion of human rights culture is the need of the hour.

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