

# Human Rights and Indian Constitution

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India got independence on 15th of August 1947. India's own Constitution was adopted on 26th January 1950. It was only the beginning of a struggle, the struggle to leave as an independent nation and at the same time to establish a democracy based on the idea's of justice, liberty, equality and fraternity. Part 3 and 4 of the Indian Constitution are mainly related to Human rights.

**Keywords:** Independence, Constitution, Struggle, Human rights

## Introduction

Constitution of a country lays down the basic structure of the political system under which its people are to be governed. It establishes the main organs of the state legislature, executive and judiciary defines their powers, demarcates their responsibilities and regulates their relationships with each other and with the people. However every constitution represents the vision and value of its founding fathers and is based on the political and economic ethos and faith and aspiration of the people. So importantly it can be noted that the framing of the constitution of sovereign democratic nation is performed by the people for the purpose of considering and adopting a constituent assembly.<sup>1</sup>

India became independent on August 15, 1947 according to Independence of India Act, 1947 enacted by the British Parliament. It made a provision for the setting up of two independent dominions in India, to be known as India and Pakistan. Thus India along with Pakistan acquired new international personality. However, both the new states were continued to be administered by the Government of India Act, 1935. The task for preparing the Constitution of India was entrusted to the Constituent Assembly which met for the first time on 9th December, 1946. The assembly appointed various committees to draft the different articles of the Constitution. The reports of these committees formed the basis on which a draft of the new Constitution of India was prepared in February 1948. Its final shape was given on 26th November, 1949 came into force on 26th January, 1950. The Preamble of the Constitution declares India to be a 'sovereign, socialist, secular, democratic republic'. The term 'democratic' denotes that the Government gets its authority from will of the people. The Government is elected by the people and it is a body of the representatives of the people. Thus the power to exercise legal as well as political sovereignty vests in people. It gives a feeling that they all are equal 'irrespective of their race, religion, language, sex and culture'.<sup>2</sup>

## Aim of the Study

1. To study a variety of provisions of Indian Constitution promoting and upholding the human rights.
2. Critically examine various rights enshrined in the Indian Constitution.

## Review of Literature

A lot of valuable theoretical and empirical studies relating to recognition and protection of human rights on international and regional level have been undertaken by various scholars. Some efforts have also been made by jurists to the analysis the various fundamental rights which are guaranteed in Part-III of the Indian constitution so as to assess their importance as human rights. But most of studies international or national concern only with the specific aspect of this problems in the following paragraphs the exiting literature has been reviewed.

P.R. Newbera The Political of Human Rights, New York University, New York (1981) is an interesting collection of essays an theoretical and practical aspects of human rights protection including some way interesting studies if problem in the under – developed world. The study is innovative for study.

R.C. Hingosani's work 'Human Rights in Indian' Oxford and IBH Publishing Co., New Delhi (1985) shows how for international human rights are observed in the Indian context. This book classifies rights into five categories i.e. civil, political, economic, and social and culture rights to Indians. But this is not an activism in this filed. It only presents an over view of rights guaranteed to Indians.

Subhash C. Kashyap in his book, Human rights and parliament, metropolitan Book Co., New Delhi (1978) attempts to clarify the meaning. Scope and ramifications of the concept of human rights in Indian and the role that parliament has played in safeguarding them. The focus throughout is on the actual role of parliament in the filed of human rights' concerns in India as typified by two illustrative case studies – one in the matter by property rights and the other concerning restoration of basic human rights of non discrimination and securing of adequate advancement and welfare of the scheduled Casts and scheduled Tribes.

R.S. Agarwal in his book, 'Human Rights in the Modern world' Chetna Publications New Delhi (1979), deals with nature of conditions of human rights in developing countries. According to him, each country is entitled to develop its own farms and methods for the realizations of civil, political, economic, social and cultural rights.

Chaudhary, R.G. and Chaturvedi in their book law of fundamental rights, Law Book Company, Allahabad (1985), exhaustively deal with "protection of life an personal Liberty – Art. 21," In two chapters of this book which throw adequate light upon the concepts of life, personal liberty this work is only related to legal interpretation ignoring political aspect, it needs further in depth study of the problem.

UNESCO Publications, violations of Human Rights: Possible Rights of Recourse and forms of Resistance (1981), deals with the role of non governmental organizations in the campaign against violations of human rights, apartheid and racism. It also explains political and juridical sanctions against violations human rights.

L.M. Singhvi's, Fundamental Rights and constitutional Amendments National Publishing house, New Delhi (1971) is yet another useful work which throws light by virtue of various articles written by constitutional experts on the amend ability of fundamental Rights. This book discusses the importance and utility of Fundamental Rights which form the core of the Indian constitution. But this work completely ignores various factors responsible for the promotion, protection, curtailment or violations of these rights.

Some articles and research papers by reputed authors like P.N. Bhagwati, "Dimensions of Human Rights, Mainstream, Marchis, 1986, PP. 11-143 Bhagwati, state of Human Rights" Social Action, Vol. 40 Jan – March 1990 PP 16 – 22; T.N. Dhar, "Governance Policing and Human Rights," IJPA, April – June 2000, Vol. XILVI, No.2 have also been examined the same.

Human rights in India : Historical, Social and

political perspectives, Nirmal Chiranjivi J Volume 2021. The essays in this volume tackle the complex issue of human rights from many different perspectives and cover such diverse issues as the rights of tribble people, prisoners and refugees.

Human rights in India, Edited by Satvinder Juss, June 2021, this volume presents an integrated collection of essays around the theme of India's failure to grapple with the bis questions of human rights protections affecting marginalized minority groups.

The history of national struggle for basic human rights can be traced back to the formation of the Indian National Congress, which endeavoured to formulate the spectrum of human rights back in 1895, when an unknown author drafted the Constitution of India Bill. However, the first formal document came into existence in 1928, with the Report of Motilal Nehru. The rights enumerated by the Motilal Nehru Report - free elementary education, living wages, protection of motherhood, welfare of children -were a precursor of the fundamental Rights and Directive Principles of State Policy, which were enshrined in the Indian Constitution 22 years later. Most important pronouncement on human rights came in the pages of Objectives. Resolution moved by Jawahar Lal Nehru in 1946. In the Objective Resolution, it was pledged to draw up a Constitution for the country wherein "shall be guaranteed and secured to all the country wherein adequate safeguards would be provided for the minorities, backward and tribal areas and depressed and other classes". The Resolution also reflected the anxiety of the founding fathers to incorporate and implement the basic principles enunciated in the Universal Declaration of Human Rights; the Assembly incorporated in the Constitution of India the substance of most of these rights. The two parts-the Fundamental Rights and the Directive Principles of the Constitution of India between them covered almost the entire field of the Universal Declaration of Human Rights. In short, the Objective Resolution forms the basis for the incorporation of various provisions of the Constitution.

### **The Preamble and Human Rights**

The Preamble to the Constitution is of supreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble. The Preamble of the Constitution declares: "We the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure to all citizens: Justice, social, economic and political; Liberty of thoughts, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all; Fraternity assuring the dignity of the individual and the unity and integrity of the nation..."In short, the Preamble concisely sets out Quintessence of human rights, which represents the aspirations of the people, who have established the Constitution. <sup>3</sup>

### **Fundamental Rights and Human Rights**

A unique feature of the Indian Constitution is that a large part of human rights are named as Fundamental Rights, and the right to enforce

Fundamental Rights itself has been made a Fundamental Right. The Fundamental Rights in the Indian Constitution constitute the Magna Carta of individual liberty and human rights. The Fundamental Rights under Articles 14-31 of the Constitution provide individual right based on right to equality, right to freedom, right against exploitation, right to freedom of religion, right to cultural and educational rights.<sup>4</sup>

These are negative rights which are made enforceable against the state, if violated.

These rights can be summed up in different categories:

### **Right to Equality (Art. 14-18)**

Right to equality is the cornerstone of human rights in Indian Constitution. While Article 14 states that "the state shall not deny to any person equality before the law and equal protection of the laws within the territory of India," the Article 15 goes to much more specific details that "the state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regard to (a) access to shops, public restaurants, hotels and places of public entertainment. "Whereas, Article 16 states that "there shall be equal opportunity for all citizens in matters relating to employment or appointment to any office under the state." Article 17 and 18 directs the state to abolish untouchability and titles respectively.<sup>5</sup>

### **Right to Freedom (Art. 19-22)**

The rights to freedom under articles 19-22, are the soul of the human rights in India. Significantly, Article 19 states that "all citizens shall have the right to freedom of speech and expression; to assemble peacefully and without arms; to form associations or unions: to move freely throughout the territory of India; to reside and settle in any part of the territory of India; and to practice any profession or to carry on any occupation, trade or business." Whereas, Article 20 says that "no person shall be convicted of any offence except for violation of a law at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence." However, the most important article of human freedom is stated in Article 21, which says that "no person shall be deprived of his life or personal liberty except according to the procedure established by law." Article 22 provides protection against arrest and detention in certain cases.

### **Right against Exploitation (Art. 23-24)**

The Constitution under Articles 23-24, enumerates a list of rights that prohibits exploitation, human trafficking and similar such exploitations. Article 23 prohibits traffic in human beings and beggar and other forms of forced labour. Our Constitution, instead of using the word 'slavery' used a more comprehensive expression "traffic in human beings", which includes a prohibition not only of slavery but also of traffic in women or children or crippled, for immoral or other purposes.<sup>6</sup>

Article 24 of the Constitution prohibits the

employment of the children below 14 years of age in any factory or mine or in any other hazardous employment. Thus forced labour is prohibited and children have been protected as a matter of fundamental rights.

### **Right to Freedom of Religion (Art. 25-28)**

The Part III of the Constitution under Articles 25-28 prescribe for certain religious freedoms for citizens. They include freedom of conscience of free pursuit of profession, practice and propagation of religion, freedom to manage religious affairs, freedom to payment of taxes for promotion of any particular religion and freedom as to attendance at religious instruction or religious worship in certain educational institutions. In short, these are vital rights of religious minorities in India.<sup>7</sup>

### **Cultural and Educational Rights (Art. 29-30)**

Article 29 and 30 of the Constitution guarantees certain cultural and educational rights to the minority sections. While Article 29 guarantees the right of any section of the citizens residing in any part of the country having a distinct language, script or culture of its own, and to conserve the same, Article 30 provides that "all minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice". In short, these are important rights, as far the protection of human rights of minority groups in a majority society as India.

### **Right to Constitutional Remedies**

Chapter III of the Indian Constitution pertaining to Fundamental Rights has a measure of judicial protection and sanctity in the matter of enforcement of these rights. Under Article 32, every person has been given a right to move to the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. Clause 2 of this Article empowers the Supreme Court to issue directions, or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari. This right cannot be suspended except when a proclamation of emergency is in force.<sup>8</sup>

### **Directive Principles of State Policy**

The Part IV of the Constitution popularly known as the Directive Principles of State Policy provides a long list of human civil and economic rights for the people of India. They form the bedrock of human rights in India. The main purpose of this charter of positive rights is to ensure social, political and economic justice to all by laying down basic principles of governance. These principles are intended to be kept in mind both by the legislatures in enacting laws and by the executive authorities in enforcing laws. Although these principles are not enforceable by any Court yet they are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws for the general welfare of their men, women and children.<sup>9</sup>

These rights are: Ø Providing adequate means of livelihood (Article 39 (a)). Ø Equal pay for equal work for both men and women (Article 39(d)) Ø Adequate protection of the health and strength of

workers, men and women (Article 39(e)). Ø Equal Justice and free legal aid (Article 39 A). Ø Living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities (Article 43). Ø Free and compulsory education for children (Article 45). Ø Increasing the level of nutrition, the standard of living and improving public health (Article 47). Ø Prohibiting the slaughter of cows and calves and other milk and draught cattle (Article 48).

#### Conclusion

The incorporation of a formal declaration of Fundamental Right in part 3rd of the Constitution is deemed to be a special feature of a democratic state. These rights are prohibitions against the state. The state cannot make a law which takes away any of rights of the citizens guaranteed in the part 3rd of the Constitution. The fundamental Rights are not absolute rights. They are subject to certain restrictions. Our constitution tries to strike a balance between the individual liberty and the social interests. The directive principles of state policy enshrined in part IV of the Constitution set out the aims and objectives to be achieved by the states in the governance of the country. Unlike the fundamental rights, these are not justiciable. If the state is unable to implement any provision of part IV, no action can be brought against the state in a law of court, yet the state authorities have to answer for them to the electorate at the time of election. The idea of a welfare state envisaged in our Constitution can only be achieved if the states is endeavour to implement them with a high sense of moral duty.<sup>10</sup>

Mere enumeration of a number of Fundamental Rights in a Constitution without any provision for their proper safeguard will not serve any useful purpose. Indeed, the every existence of a right depends upon the remedy for its enforcement. For this purpose an independent and impartial judiciary with a

power of judicial reviews has been established under the Constitution of India. It is the custodian of the rights of citizens.<sup>11</sup>

In a nutshell the Preamble, the Fundamental Rights and the Directive Principles all are parts of the same constitutional scheme and aim at the establishment of a free and an egalitarian social order based on rule of law where all shall be enabled to enjoy the spirit of Human Rights jurisprudence.

#### References

1. Baxi, U (1981), *The Right to be Human*. India International Centre, New Delhi.
2. Diwan, P & Diwan, P(1998), *Human Rights and the Law-Universal and Indian*, Deep & Deep Publications Pvt. Ltd., New Delhi, p.23.
3. Sharma, G (2003), *Human Rights and Legal Remedies*, Deep & Deep Publications Pvt. Ltd., New Delhi.
4. Desai A.R. (1986), *Violation of Democratic Rights in India*, Popular Prakashan, Bombay.
5. Sehgal, B.P.S (2004), *Human Rights in India: Problems and Perspectives*, Deep & Deep Publications Pvt. Ltd., New Delhi, p.23.
6. Welch, E. Jr, and Leary, V.A (1990), *Asian Perspective on Human Rights*, Western Press, Oxford.
7. Mehta, P.L & Verma, N (1999), *Human Rights Under the Indian Constitution*, Deep & Deep Publications Pvt. Ltd, New Delhi, p.56.
8. Basu, D.D (2007), *Introduction to the Constitution of India*, S.Chand and Company, p.98.
9. Kothari, R and Sethi, H (1987), *Special Issue on the Politics of Human Rights*, Lokayan, Bulletin, 5/4/5, p.33.
10. J.N. Panday, *Constitution of India*, Central Law Agency, Allahabad, 1997, Page 27
11. *Ibid*, Page 27