

VOICES FOR HUMAN RIGHTS

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ABSTRACT

Today the world over, there is considerable discussion on human rights and various United Nations bodies and non-governmental organisations are concerned about the implementation of human rights. The term 'human right' is basically understood as of "the rights of man". The Universal Declaration 1948 was the first of the series of documents intended to constitute an International Bill of Rights and it was followed by two important Covenants transforming the principles enunciated in the Universal Declaration in to treaty provisions establishing legal obligation on the part of each ratifying country. One was the International Covenant on Civil and Political Rights and its Optional Protocol and the other was the International Covenant on Economic, Social and Cultural Rights. India, as an active member, has promptly ratified both these International Covenants with certain modifications. Human rights being essential for all round development of the personality of the individuals in the society, be necessarily protected and made available to all the individuals. They must be preserved, cherished and defended if peace and prosperity are to be achieved. Human rights are the very essence of a meaningful life, and to maintain human dignity is the ultimate purpose of the Government.

KEYWORDS: Human Rights, Physical, Moral, Social and Spiritual Welfare

INTRODUCTION

The subject of human rights is about the study, promotion and effective protection of the inherent dignity and fundamental rights of all human beings. However, many factors in history have intervened to affect the enjoyment of human rights. Human rights are rational in nature. Human rights, being the birth right, are therefore inherent in all individuals irrespective of their caste, creed, sex, religion and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people. It can be said that rights that all people have by virtue of their being human are human rights. These are rights which no one can be deprived without a grave affront to justice. It is because they may affect the human rights. They are based on elementary human needs as imperatives. Human rights being essential for all round development of the personality of the individuals in the society, be necessary protected and be made available to all the individuals. They must be preserved, cherished and defended if peace and prosperity are to be achieved. The Human Rights Voices is dedicated to mainly drawing attention to real victims of human rights abuse and making transparent the United Nations record on its fundamental promise to identify, condemn and protect against human rights violations and directions for modern-day democratic societies.

Human rights are the very essence of a meaningful life, and to maintain human dignity is the ultimate purpose of government. The need for the protection has arisen because of inevitable increase in the control over the activities of the citizens by the government which by no means can be regarded as desirable. Presently, there is widespread acceptance of the importance of human rights and in the international structure because it has legal, moral and political bearing on human being everywhere. Human rights are legal because it involves the implementation of rights and obligations mentioned in international treaties. It is moral because human rights are value-based system to preserve human dignity and it is political in the larger sense of the word. They also operate to limit the power of governments over individuals.

No single phrase in recent human history has been more privileged to bear the mission and burden of human destiny than the phrase “Human Rights”. The reason behind it is that the millions of men, women, youth and children around the world will be born, live and die and never know they are owners of human rights. Human rights in India are explored through the judicial interpretation of the expression ‘right to life and personal liberty’ as appearing in Article 21 of the constitution. The Supreme Court on interpreting the provisions of part iv, however brought in to play in part III, fundamental rights, a new set of rights based on principles of social justice as fundamental rights. That is why it is said that chapter on Fundamental Rights under Part III of the constitution is the heart of the human rights and it is consonance with principles laid down in Universal Declaration of Human Rights.

Many organisations around the world dedicate their efforts to protecting human rights and ending human rights abuses. Major human rights organisations maintain extensive websites documenting violations and calling for remedial action, both at a governmental and grass-roots level. Public support and condemnation of abuses is important to their success. In the worldwide, the champions of human rights have most often been citizens, not government-officials. In particular, nongovernmental organisations (NGOs) have played a primary role in focusing the international community on human rights issues. NGOs monitor the actions of governments and pressure them to act according to human rights principles.

It is remarkable to see in the special context of India that the positive role played by the non-governmental organisations (NGOs) in focusing the cause of human rights has been recognised both by the Protection of Human Rights Act, 1993 and the National Commission on Human Rights (NHRC). The Protection of Human Rights Act, in its Section 12(1) has made a provision for the Human Rights Commission to encourage the efforts of NGOs and institutions working in the field of Human rights. The Commission also encourages and utilises the NGOs for organising Seminars, training programmes, coordinate and canalize the efforts in the field of human rights and above all in spreading human rights awareness.

Meaning of Human Rights

‘Human rights’ is a generic term and it embraces civil rights, civil liberties and social, economic and cultural rights. Justice J. S. Verma, the then Chief Justice of India has stated, ‘Human dignity is the quintessence of human rights’. All those rights which are essential for the protection and maintenance of dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent can be termed human rights. However, dignity has never been precisely defined on the basis of consensus, but it accords with justice and good society. They are conceived of as rights inherent in individuals as rational, free-willing creatures, not conferred by mere positive law, or abrogated by positive law. Human rights are therefore, those rights which belong to an individual as a consequence of being human.

Section 2(d) of the Protection of Human Rights Act, 1993 define human rights as, ‘the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India’. The instrument of Accession by India to the Human rights Covenant (1979) also declares with reference to Article 9 of the International Covenant on Civil and Political that the government of the Republic of India takes the position that the provisions of this Article shall be so applied as to in consonance with the provision of Article 22(3) to the Constitution of India.

Human Rights- Constitutional Provisions

The constitution provides a number of rights to the individuals in Part III which have been termed as

'Fundamental Rights'. The expression 'Fundamental' denotes that these rights are inherent in all the human beings and are essential for the individuals for blossoming of the human personality and soul. These rights represent the basic values of a civilised society and the constitution makers declared that they shall be given a place of pride in the constitution and therefore they elevated them to the status of fundamental rights. These rights are therefore calculated to protect the dignity of the individuals and create conditions in which every human being can develop his personality to the fullest extent.

The constitution of India is based on the principles of liberty, equality, fraternity and justice. The provisions of the constitution manifest great respect for human dignity, commitment to equality and non-discrimination and concern for the weaker section in society. Further, the constitution makes it mandatory for the government to protect and promote freedoms and to assure every citizen a decent standard of living. In other words, the Indian constitution guarantees the basic human rights to every citizen of India. The schemes for realization of the above mentioned goals are contained in the Fundamental Rights enshrined in Part III and Part IV of the Constitution. Some of the provisions are Article 21A which state that the State shall provide free and compulsory education to all children of the age six to fourteen years in such a manner as the state may, by law, determine. In *Mohini Jain v State of Karnataka* AIR, 1992 SC 1858, that the right to education flows directly from the right to life and that the right to education was concomitant to the Fundamental Rights, Article 41, Right to work, Article 45, to education and to public assistance in certain cases. Article 46, provides provision for, promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and Other weaker Sections.

Article 51A(k) under the chapter of Fundamental Duty, says, who is a parent or guardian provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Article 14 Equality before law, the guarantee of equality, protection before law and equal protection of laws is similar to one embodied in the 14th amendment to the American Constitution, applying to all in the same circumstances. It only means that all persons in similar circumstances shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards to the subject matter of the legislation their position is the same. Thus the rule is that the like should be treated alike and not that unlike should be treated alike. Article 15 provides prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Article 24 provides prohibition of employment of children in factories, etc, no child below the age of 14 years can be employed in the hazardous work and Article 25 has the provision of the freedom of conscience and free profession, practice and propagation of religion. Article 29 provides protection of interest of minorities, Article 30 provides Right to establish and administer educational institutions. It was decided in the case of *Father Thomas Shingare v State of Maharashtra*, AIR 2002 SC 463, that the State cannot impose any restriction on the right of the minorities to administer educational institution so long as such institutions are unaided by the state, except to the limited extent that regulations can be made for ensuring excellence in education.

National Human Rights Institutions (NHRI)

In general, the term NHRI has been used by various scholars in different ways and some have very optimistically called NHRIs as 'Fundamental Building block of human rights protection' and with their complementary mechanisms the new actors on human rights landscape. While others have identified them as state sponsored, state funded entity and government agencies, some other scholars have not associated them with government and have recognised them as independent entities.

The acronym 'NHRIs', however, encompasses human rights commissions and ombudsman offices that have been created to promote and protect human rights in countries around the world. Located in more than 100 countries, these

organisations are permanent, independent authorities established by constitutional mandate, legislation, or presidential executive order. They address human rights concerns set out in international human rights law on standards, which in some cases means they enforce rights beyond those specified by their country's constitution. NHRIs are encouraged to take as their frame of reference the definitions of human rights as set out in international human rights and standards, whether or not the state has ratified the relevant treaties. The mandate includes the power to protect and promote economic, social and cultural rights as well as civil and political rights.

Human Rights Commission in India

India has shown keen interest in the past in establishing or strengthening a national institution for the promotion and protection of human rights before the Third Committee of the General Assembly of the United Nations Organization. It introduced a draft resolution wherein it emphasized the importance of the integrity and independence of such national institutions. In the draft resolution it also requested the Secretary General of the United Nations to submit a report to the General Assembly in two years regarding the functioning of the various kinds of national institutions and their contribution towards implementing human rights instruments. The interest shown by India in the establishment of a national institution for the protection and promotion of human rights was loud and clear.

On the demand of the various international and domestic conventions, India finally, being a signatory of these conventions, introduced the Institutions for Human Rights. Moreover, constant pressure from people and the growing rise in violation of rights of the people, it became necessary to enact an Act that legally protects the rights of the people. Through this Act, India introduced a central institution in the name of the National Human Rights Commission, which will carry those functions and powers as mentioned under the Act. This Act has also made provisions for the establishment of State Human Rights Commission in various states in order to reduce the burden of the Central Institution.

Protection of Human Rights Act, 1993

In the year 1992, the Human Rights Commission Bill was introduced in the Lok Sabha. The Bill was referred to the Standing Committee of the parliament on Home affairs. However, due to the urgency of the Commission in view of the pressure from the foreign countries and from the domestic front, the president of India promulgated an Ordinance on September 28, 1993 for the creation of a National Commission on Human Rights (NHRC) and Commissions at the state level. The Protection of the Human Rights Bill was passed by both the houses of Parliament, after certain amendments, to replace the ordinance. After receiving assent from the President on 8 January, 1994, the Bill came to be known as the Protection of Human Rights Act. The Act was applied retrospectively and came into force on 28 September, 1993.

The main purpose for the enactment of the law was to provide as well as promote human rights to the common people and thereby a commission was established in order to provide the various rights to the common people. The preamble to the Act makes it clear that it is an Act to provide for the constitution of National Human Rights Commission, Commissions in States and Human Rights Courts for better protection of Human Rights and for matters connected therewith. This Act has given a very narrow definition of the term 'human rights' under Section 2(d). According to this Act human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the International Covenants and enforceable by Courts in India. It includes only those fundamental rights relating to life, liberty, equality but does not include rights of the minorities (Article 29), prohibition of employment of children in factories (Article 25).

The term Enumerated rights means those rights which are given under Part III of the Constitution and are specified as Fundamental Rights. The term other Fundamental Rights are those rights which have been accepted as

fundamental rights by the court though not specified as fundamental rights in the constitution, such as right to privacy, right to travel abroad, etc. The term un-enumerated rights are those rights which are given in the International Covenants but are neither recognised under the fundamental rights in the constitution nor by the courts. However, un-enumerated rights may be used as fundamental rights in certain cases. In *Visakha v State of Rajasthan* AIR 1997 SC 3011, the Supreme Court recognised the right of gender equality and guarantee against sexual harassment of women in working places as specified under Article 14 of the constitution. Such rights once recognised by the Courts can be removed from the category of un-enumerated rights. In *T. Vellaiyan v The Registrar*, AIR 2005 Mad. 80 State Human Rights Commission, Chennai a question was put to the Court that whether right to property is included in the definition of human rights under the Act. The Madras High Court held that the definition of human rights under the Act. The Madras High Court held that the definition of human right cannot be extended to right to property when the legislature has explicitly omitted this right. Similarly, in the case, *State of Maharashtra v Sau Sobha Vithal Koithe* AIR, 2006 Bom. 94, right to work cannot be included within the definition of human rights in the Act.

The Supreme Court finally concluded that the development as well as the protection and promotion of human rights should proceed from a common platform. Progress and development in all fields will not give a boost to the economy of the country but also result in living conditions for the people of India.

Role of Non-Governmental Organisations (NGOs)

The system of protection and promotion of human rights has since its beginning been inconceivable without the work of NGOs. These organisations are a vital aspect of the global human rights struggle. Due to their nature being decentralised and following their own set of priorities and agendas, they have proven to be capable of more effectively and speedily spreading the human rights message than most international organisations, which are associated with more bureaucratic and political constraints. NGOs have been able to extent a huge amount of pressure on governments to change their policies which result in violation of human rights, through obtaining information and drafting reports and protesting through electronics and print media and sometimes demonstrating in-front of the government offices. There have been many small and scattered social action groups raising the issues of oppression and exploitation trying to enlarge the scope of social legislation to improve the living conditions of the masses; women groups, environment activities, groups which extend support to the struggle for democracy and justice; legal fora and small political parties constituted to fight against the human rights violations by the state and its organs. Some specialist group of NGOs known as Civil Liberties and Democratic Rights groups are now-a-days very active in everywhere in every field. They become very vocal and active in pursuing a specific agenda and reach to the expectation of the people. In many states the NGOs like peoples Human Rights Council are committed to work and advocate for the protection and promotion of human rights among the people in urban and rural areas also. NGOs play important role in bringing a concrete expression of local voice to assist and stand up for those who cannot speak for themselves.

The importance of the role of NGO can be explained from another angle. NGOs can carry on their objectives and actions on continuous basis while the government organisations depend too much on the policy appraisal sheet. Most of the NGOs require more funds so as to realize more activities towards human rights. This is true for all human rights groups- economic, civil, social, cultural or political. The NGOs provide human right training programme mostly in the rural areas and some NGOs get human right training from the NHRC and other INGOs.

CONCLUSIONS

Human rights are the fundamental natural rights which are the most precious possession of a mankind. They are

those rights which are needed for all round development of the personality of the individuals in the society and they should be preserved in order to achieve prosperity. The protection of Human Rights Act was enacted in 1993 to provide for the constitution of the National Human Rights Commission, the State Human Rights Commission and the Human Rights Courts in districts with a special purpose which is for better protection of human rights. There is no doubt that the National Human Rights Commission has made an enquiry in to thousands of complaints of violation of human rights, it has also investigated a number of serious cases of human rights violation, and it has submitted reports to the government wherein it has made a number of recommendations suggesting measures to be taken to curb the human rights violations, but the commission has been least effective to protect human rights. The protection of Human rights Act, 1993 has lots of loopholes. In the first place, a serious defect of the Act is that establishment of State Human Rights Commission has not been made Compulsory. Secondly, Jurisdiction of the Human Rights Courts has not specified in the Act. It is also not clear what cases will be conducted in such courts and what procedure shall be followed in such courts.

It is true that no National Institution or Human Rights Commission, however effective it might be, can provide food, shelter, clothing, education and health facilities to the millions of wanting people in the country. It is the duty of the government to provide these basic facilities which are essential for the promotion of human living standard and dignity. What the Commission is required to do is to develop a culture of human rights among the people and government organisations and also to encourage the private sector to promote human rights by the media, including the print, electronics media, the internet and advertising. Last and not the least it should be the duty of government to ensure that the human rights education being a distinct study is made compulsory in the pre-university and the graduation courses of the universities. It can be conclude with the words of Thomas Jefferson, author of the American Declaration of Independence, who said that the “The care of human life and happiness and not their destruction is the first and only legitimate object of good government”.

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