

Human Rights in India: A Brief Study

Surojit Mallick

M.A. in Political Science, Department of Political Science,
Rabindra Bharati University, Kolkata, West Bengal, India

ABSTRACT

The concept of human rights is a universal concept. In 1948, the Universal Declaration of Human Rights was proclaimed by the United Nations, known as the Universal Declaration of Human Rights. Since the Human Rights protection Act of 1993, the Government of India has taken a number of initiatives, some of which have been put into practice. Rights refer to those civic amenities that are recognized and protected by the state. The relationship between the state and its law is very close to the concept of rights and indeed human rights can only be preserved when citizens are aware of their duties and rights. The human rights act enacted by the government of India states that human rights are the right to life, liberty, equality and dignity recognized by the constitution or recognized by the international treaties. But many things that are related to human rights have not been implemented. I have tried to show through this paper that the state of human rights in India and the success and failure of human rights is moving forward through various debates.

KEYWORDS: Human Rights, Violation, Religion, Protection Act, India

I. INTRODUCTION

Human rights are a global phenomenon. Rights of human being are inherent in nature and have come up in our society over the years. Human rights referred to the fundamental freedom and basic liberty is without which men women and children cannot live without respect and dignity, the history of human civilization itself. According to Jack Donnelly Human rights are literally the rights that one has simply because one is a human being. In other words it could be said that human rights are those basic standards without which man cannot live with dignity. The rights of men have been matter of concern and important for all civilization from time immemorial. In contemporary discourse Human rights has occupied the centre stage. It has become a catch word. It has become common language of humanity and even politics. In spite of difference of opinion perception and practices among individuals, the dignity and equality of human beings remains the supreme and abiding value. The Human rights referred to all those which are common to all human beings. The concept of human rights sprang up from the concept of natural laws and natural rights as conceived by the Romans, particularly by Cicero. In the west the English political philosopher John Locke gave the concept of Human rights in the 17th century in his famous book the two treaties on civil government. But the idea of Human rights assumed the form of an international movement only in the second half of the twentieth century. The Human rights movement started the momentum in the decades of 1950 and 1960. In this time period Human rights became a major political issue. But the idea of human rights have come into reality by the United Nations proclamation on the universal declaration of Human

rights (1948), statement of universal goals concerning human rights and freedom. Its content has been incorporated into some national constitution even including the constitution of India.

Another important thing is the concept of Human rights is not unchangeable and independent of social reality, but rather dynamic and always developing. But the common people are not aware of human rights and what steps could be taken for the violation of their rights. Even after long time the approval of human rights, rights of the people are not preserved and protected. People have the right to food but millions of people in the world are starving. People have the right to work but a large number of them are deprived of the opportunity to get job. In every sphere of life this right is being violated. Each violation of human rights, where ever it occurs, is a threat to the welfare and dignity of the human society. Human rights in India is an issue complicated by the country's large size and population, widespread poverty, lack of proper education as well as its diverse culture even though being the world's large sovereign, secular and democratic Republic.

II. Events regarding human rights in India

- The constitution of India establishes a sovereign democratic republic with universal adult franchise. Part 3 of the constitution contains a bill of fundamental Rights enforceable by the Supreme Court and the high courts. It also provides for reservations for previously disadvantaged sections in education, employment and political representation (1950).

How to cite this paper: Surojit Mallick "Human Rights in India: A Brief Study"

Published in International Journal of Trend in Scientific Research and Development (ijtsrd), ISSN: 2456-6470, Volume-5 | Issue-2, February 2021, pp.450-453, URL: www.ijtsrd.com/papers/ijtsrd38424.pdf



Copyright © 2021 by author(s) and International Journal of Trend in Scientific Research and Development Journal. This is an Open Access article distributed under the terms of the Creative Commons Attribution License (CC BY 4.0) (<http://creativecommons.org/licenses/by/4.0>)



- Criminal tribes Acts repealed by government, former "criminal tribes" categorized as "identified" and habitual offenders Act (1952) enacted.
- Reform of family law concerning Hindus gives more rights to Hindu women. Untouchability Offences Act (1955).
- Armed forces (special power) Act 1958 .Armed forces special power Act, 21st November, 2007).
- Supreme Court of India rules in kesavananda bharati case that the basic structure of the constitution (including many fundamental rights) is unalterable by a constitution amendment. (1973).
- State of Emergency in India extensive rights violations take place (1975-1977).
- Supreme Court rules in Menka Gandhi versus union of India that the right to life under article 21 of the constitution cannot be suspended even in an emergency (1978).
- Jammu and Kashmir public safety Act,1978.The Jammu and Kashmir public safety Act ,report of Amnesty International ,(15th May ,2000)(Jammu and Kashmir public Safety Act ,1978,10th October 2012).
- The Shah Bano case, where the supreme court recognized the Muslim women's right to maintenance upon divorce ,sparks protests from Muslim clergy .To nullify the decision of the supreme court ,the Rajiv Gandhi government enacted the Muslim women(protection of Rights on Divorce)Act 1986.
- Scheduled caste and scheduled tribe (prevention of Atrocities) Act, 1989 is passed.
- Kashmir insurgency sees ethnic cleansing of Kashmir pandits, desecrating Hindu temples, killing of Hindus and Sikhs, and abductions of foreign tourist and government functionaries (1989-present)
- A constitutional amendment establishes Local self-Government (panchayati Raj) as a three tier of governance at the village level, with one-third of the seats reserved for women. Reservations were provided for scheduled castes and tribes as well (1992).
- Demolition of the Babri masjid occurred after a political rally at the site turned violent. (1992)
- National Human rights commission is established under the protection of Human Rights Act (1993)
- Supreme Court passes extensive orders to implement the right to food (3rd January, 2014)
- 2002 Gujrat riots which claimed at least thousand lives of Muslim and Hindus (2002).
- A powerful Right to information Act is passed to give citizen's access to information held by public authorities (National campaign for people's Right to information (2005).
- National Rural Employment guarantee Act (NREGA) guarantees universal right to employment (2005).
- Supreme Court orders police reforms in response to the poor human rights record of Indian police. (Police Reforms ordered by Supreme Court).
- Delhi high court declares that section 377 of the Indian penal code, which outlaws a range of unspecified "unnatural "sex acts ,is unconstitutional when applied to homosexual acts between private consenting individuals effectively decriminalizing homosexual relationships in India.(The times of India ,1st July 2013, Mitta Manoj Singh smriti ,India decriminalizes gay sex,2009.
- Criminal Law (Amendment) Act was passed by the Lok sabha on 19th March 2013, and by the Rajya Sabha on

21st March, 2013, which provides for amendment of Indian penal code. Indian Evidence Act and code of Criminal procedure, 1973 on laws related to sexual offences. (2013)

- Black Money (undisclosed foreign Income and Assets) and imposition of Tax Act was passed by both the Houses of the parliament. This act aims to curb black money or undisclosed foreign assets and income and imposes tax and penalty on such income (2015).

III. Violation of human rights in India

The Asian centre of human rights estimated that from 2000 to 2008, over 4 people birthday died while in the police custody, with hundreds of those dates being due to police torture. According to report written by the institute of correctional administration in Punjab that, up to 50% of police officers in the country have used physical or mental abuse on prisoners (www.tribuneindia.com 15th may, 2011, death in police custody). Instance of torture such as through a lack of sanitation, space or water have been documented and West Bengal as well.

Communal conflicts between religious groups have been prevalent in India since around the time of independence from British rule. Communal riots took place during the partition of India between Hindu and Muslims were large numbers of people were killed in large scale violence. The 1984 anti Sikh riots was a four day period during which Sikhs were massacred by members of the secular centrist Congress party of India, some estimates state that more than 2000 were killed. We know all babri masjid incidents in 1992. According to officials figure, 2002 Gujarat riots in ended with 1044 dead, 223 people were missing and 2500 people were injured. Out of dead number 790 people wear Muslim and 254 people were Hindus (www.hrw.org, Meenakshi ganguly, "addicted on Gujarat justice in complete" 4th December 2016). The former chief minister in Gujarat Narendra Modi has been accused of initiating and condoning the violence, as have police and government officials who allegedly directed the rioters and gave lists of Muslim owned properties to them. As a result of this religious violence, it is clear that the human rights of people of both religions are being violated.

Until the Delhi court decriminalized consensual private sexual acts between consenting adults on 2nd July,2009 homosexuality was considered criminal as per interpretations of the ambiguous section 377 of the 150 year old Indian penal code, hello passed by the colonial British authorities. However this law was rarely enforced. In its ruling decriminalizing homosexuality, the Delhi high court noted that existed law conflicted with the fundamental rights guaranteed by the constitution of India and such criminalizing is violation of articles 21, 14 and 15 of the constitution. On December 2013 homosexuality was again criminalized by the Supreme Court ruling. On 6th September 2018 a five judge constitutional bench of the supreme court of India is a landmark judgment this criminalized homosexuality and banned discrimination based on sexual orientation (www.timesofindia.com, 27th April 2016).

IV. Role of judiciary to protect human rights in India

Judiciary in India enjoys a very significant position since it has been considered as the guardian and custodian of the constitution. It not only is a watchdog against violation of fundamental rights guaranteed under the constitution.

Indians and aliens alike may raise their voice against discrimination, abuse of state power. Judiciary like the legislature and the executive is an important organ of the state where democracy is based on the rule of law. Liberty and equality have flourished and thrived in India due to the proactive role played by the Indian judiciary. The judicial system has an important role to play to ensure better public governance. There is no area where the judgment of supreme court have not played a significant contribution in the governance whether it is environment, Human rights, gender justice, education, police reforms, elections and units on constituent powers of parliament to amend the constitution. Some instances given below-

1. Reiterating the view taken in *Motiram*, the supreme court in *Hussainara Khatoon*, expressed anguish at the anguish at the 'travesty of justice' on account of under-trial prisoners spending extended time in custody due to unrealistically excessive condition of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that "the procedure established by law for depriving a person of life personal liberty (Art .21) also should be reasonable, fair and just". (*Motiram and others Vs state of M.P .AIR 1978 scheduled 1994*)(*Hussainara khatoon and others Vs Home secretary ,state of Bihar A.I.R 1979 Sc 1360*).

2. In *Delhi domestic working women's forum (vs. union of India -and others 1995 sc14)*.The court asserted that "speedy trial is one of the essential requisites of law" and that expedition's investigations and trial only could give meaning to the guarantee of "equal protection of law "under Art .21 of the constitution .

3. In *D.K basu Vs the court found custodial torture*, "a naked violation of human dignity "and ruled out law does not permit the use of third degree methods or torture on an accused person since "actions of the state must be right, just and fair, for here for extracting any kind of confession would neither be right nor just and fair"(*D.K basu Vs state of West Bengal, AIR 1997 -sc 610*).

4. Honor killing is a shame for our civilization .In recent case of Honor Killing of young couples by the khap panchayat in Hariyana, for having married within the same gotra, the karnal sessions court passed a landmark order on 30th March 2010 awarding death penalty to the five persons for the double murder. In *Lata sing Vs State of Uttarpradesh (AIR.sc 2007)* the Supreme Court held that "we sometimes hear of honor killings of such persons who undergo inter cast or inter religious marriage of their own free will. There is nothing honorable in such killing; in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment.

5. *Bhanwari Devi*, a social worker in the state of Rajasthan, was gang raped by five men as she was a protagonist in the movement of prevention of child marriage in her state .The trial court acquitted all five respondents. *Vishakha*, a group for women's education and research took the case before the Supreme Court on the issue of sexual harassment at work place. On 13th August 1997 the apex court prepared a guidelines, commonly known as ' *Vishakha Guidelines*' which has defined sexual harassment and put the obligation on employers to provide a safe working environment for women.(*Vishakha vs state of Rajasthan*).

6. The women from Syrian Christian community in Kerala were prevented from inheritance of property, since long time, for the quiver of patriarchal traditions. This was challenged by *Mary Roy*, a women's right activist and educator .This petition was rejected in the lower court, but the Kerala High court overruled the previous judgment .In 1986, the supreme court passed a judgment granting Syrian Christian women the right to have equal share in their father's property. (*Mary Roy Vs state of Kerala*).

Protection of human rights act 1993

1. National human rights commission

The Human rights commission bill introduced in the Lok Sabha on May 14, 1992 was referred to the standing committee on home affairs of the parliament. The president of India promulgated an ordinance, which established a national commission on human rights on September 27, 1993, owing to pressure from foreign counterparts as well as from the domestic front. Thereafter a bill on human rights was passed in the Lok Sabha on December 18 in 1993 to replace the ordinance promulgated by the president the bill became an act, having received the assent of the president on January 8 1994 (Act 10 of 1994) and was published in the gazette of India, extraordinary part II section 1, on January 10, 1994. Thus, the protection of human rights act came into force. Article 1 (3) provided that the act should be deemed to have come into force on September 28, 1993. Section 1 (2) states that the act is extended to the whole of India and that it shall apply to the state of Jammu and Kashmir only in so far as it pertains to the matters related to any of the entries enumerated in list 1 or list 3 in the seventh schedule of the Constitution applicable to the state. The purpose of the enactment is laid down in the preamble of the act. It provides for the establishment of national Human rights commission, state Human rights commission in States and Human rights courts for better protection of human rights.

2. State human rights commission

The protection of human rights act under chapter V also provides for the setting up of state Human rights commission in state consisting of a chairperson who has been a chief justice of a high court, one member who is or has been a judge of high court, one member who is or has been a district judge in the state and two members to be appointed from amongst persons having knowledge of practical experience in matters related to human rights. The governor shall appoint the chairperson and other members of the commission. The commission is required to submit its annual report to the state government and it may submit at any time special report on any matter which in its opinion is of such urgency or importance that it cannot be deferred till the submission of the annual report.

3. Human rights courts in districts

The setting up of Human rights courts in every district of the country for the speedy trial of offences arising out of violation of human rights is a novel provision of the act. Section 30 of the act provides for the setting up of Human rights courts by the state governments with the concurrence of the chief justice of the high court by notification, specifying for each district a court of session to be a human rights court.

V. Some initiative taken by government

India has taken important steps in recent years, in particular with legal reform with respect to the treatment of women, Dalit and various groups. More recently the government has

introduced a transgender person bill which is very good for transgender community and their development. There is also a mental health care bill and rights of persons with disabilities bill pending in parliament, aimed at advancing the rights of people with disabilities. But the government and local authorities continue to fall short, both with respect to legal reforms and implementation. The Modi government has failed to promptly condemn attacks against religious minorities or call on state governments to investigate and prosecute those responsible- some of them had members for supporters of the ruling party. Similarly while state governments have been responsible for using problematic national laws to restrict peaceful expression, the Modi government has a record of defending such laws and has been unwilling to take legislative steps to repeal or amend them to bring them in line with international Human rights standards.

In recent years India has made considerable progress towards protecting the rights of vulnerable population. In 2015, the government enacted the schedule caste and scheduled Tribes amendment Bill, strengthening protection for Dalit and tribal communities and making it easier for them to pursue justice. After the 2012 gang rape and murder of young students in Delhi, the government undertook legal reforms introducing new and expanded definitions of rape and sexual assault, criminalizing acid attacks providing for right to medical treatment and instituting new procedures in. to protect the rights of women with disabilities who experience sexual assault. India has also enacted right to education law guaranteeing free and compulsory elementary education to all children age 6 to 14.

VI. Conclusion

Looking at the current state of human rights in India, it is clear that since 1993, various initiatives have been taken for human rights. Attempts are also being made to ensure that human rights are not violated. But in spite of all this, the human rights that are being violated in the field of religion and also other violation like caste related issue, payment violation cannot be accepted at all. In this case, the negligence or indifference of the government is seen again and again. However, it can be said that the Government of India is currently trying in various ways to ensure that

human rights are not violated and as a result the passage of the Transgender Bill is an important chapter. In addition, another important point is that the central and state governments in India need to pay more attention to the issue of human rights and ensure that no one is deprived of this right.

VII. REFERENCES

- [1] Bhattacharya, Amit & Ghosh, Bimal Kanti (EDT), "Human rights in India: Historical perspective and challenges", Kolkata, Setu Prakashani
- [2] Bryan A, 2005, "Human rights and private wrongs", New York, Rutledge publications.
- [3] Chopra J. K, 2005, "Violation of human rights in India", New Delhi, DPS publishing house
- [4] Human rights watch, 2016, "Shifting dissent: The criminalization of peaceful expression in India", New York, Human rights watch publications.
- [5] Jeffrelot Christopher, 2003, "Communal riots in Gujarat: the state at risk", New Delhi, permanent black publications.
- [6] Paul R.C, 2000 "Situations of human rights in India", New Delhi, Commonwealth publishers
- [7] Prasad R N (EDT) 2011, "Human rights in India", New Delhi, kanishka publication
- [8] The Gurdian, 6th September, 2018, the gurdian, vol 8 saif Michael, "Indian supreme court Decriminalises homosexuality".
- [9] The Hindu, 12th June, 2018
- [10] Times of India, 27th April, 2016
- [11] www.hrw.org
- [12] MHA.gov.in
- [13] Das A.K and Mohanty, P.K, "Human rights in India", Sarup and sons, new Delhi, 2007
- [14] Nirmal C. J, "Human rights in India", Oxford University press, New Delhi, 2000