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HUMAN RIGHTS AND FUNDAMENTAL RIGHTS : AN ANALYSIS

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Abstract

Humans in order to survive need certain rights which are inherent to them on the ground that they are born as a human. Basic rights are very essential for the overall development of an individual as well as for the protection of the person. It is important that there must be certain rights which are universal in nature and at the same time are available to all the people irrespective of the any condition. It is important that there must be certain rights which cannot be taken away by any state machinery. In the past there have been a lot more violations of the basic rights of human beings. Magna Carta was considered as the first document which deals with the basic rights of the individuals. After the World War II there was an urgent need for an international body who would be enabling all the countries in the world to come together for incorporating certain natural rights which a man would inherit on his birth and which cannot be taken away from them under any circumstances. This paper will focus on the relationship between the human rights and fundamental rights, development of human rights in the form of fundamental right and how the Indian constitution was highly influenced by the universal declaration of human rights.

Keywords : Human rights, Fundamental rights, relationship between human rights and fundamental rights, UDHR.

INTRODUCTION

Human rights can be defined as those rights which are available to all human beings on the basis of them being the member of a human family. These rights must be universal and absolute in nature so that the same is made available to all the persons irrespective of race, religion, citizenship, rich, poor etc. Man is considered as a social animal and hence he would always be living in a society. Hence, it is important to guarantee certain rights so that his interests are not violated. The human rights are considered as affirmative rights as it protects and guarantees certain rights to an individual while on the contrary they also apply certain restrictions upon

the state and other individuals so that the rights of an individual are not violated. The human rights are essential for the survival of a human being as it also protects their human dignity. As the society we live in is dynamic in nature hence, the human rights are also becoming vaster in their dimensions for meeting the present needs.

India is one of the largest democratic countries which was highly inspired by the human rights and has understood the importance of the same. While framing the constitution the human rights were included in various provisions of the Indian constitution in the form of fundamental rights. It has also helped in addressing the recent issues in India like forced and bonded labor, gender inequality, human trafficking, death in custody, death behind bars and other issues. The Universal Declaration of Human Rights (UDHR) plays an important role on its own, even though the ILO firstly started the conventions on workers' rights in the year 1920. These conventions focused on the elimination of forced labor, the creation of unions and organizations to settle disputes, and most countries even passed laws in this area.

The United Nations General Assembly passed the Universal Declaration on December 10, 1948. The previous wars and the violations of basic rights have made it important for the adoption of human rights. It was the first piece of writing on which all nations concurred on a thorough description of unalienable human rights.

Human rights law is well-preserved under the Indian Constitution. When the constitutional framers were making the constitution they understood the importance of human rights and included the same. This is the most comprehensive human rights charter ever created by any nation in the world. The most crucial section of the Indian Constitution pertaining to human rights is Part III¹. In India, the judiciary has a considerable impact on the safeguarding of human rights. The Indian Courts had already evolved into the courts of the oppressed and struggling masses and have opened their doors to the underprivileged, uneducated, illiterate, and oppressed as well as to every citizen.

CHARACTERSTICS AND DEVELOPMENT OF HUMAN RIGHTS:

According to John Locke all individuals are born equal with certain basic natural rights² which are universal in nature and the same are also considered as inalienable rights which cannot be

¹ Constitution of India Act, 1950, Part III.

² Silvia Castignone, *Introduzione alla filosofia del diritto*, Ed. Laterza, Roma, 2004, p. 198.

taken away by any means. Right to life, liberty and right to property are considered as inalienable rights which are also included and guaranteed under the constitution of all the countries. Human rights are also defined as all the humans are born free and also possess equal dignity and rights irrespective of age, caste, race, gender, nationality etc.

The basic or natural rights has always considered as important and have been time and again discussed in various texts. Rig Veda is the first document where the reference was made with respect to the three civil rights which are possessed by all the persons irrespective of any condition. Those rights are:

1. Tana – it refers to the liberty of body.
2. Shelter – every person has the right to shelter.
3. Life – every person whether male or female, rich or poor has the right to life.

So all these three rights were included in the Rig Veda which implies that the concept of human rights are not a new development. Instead, it was already existing since beginning but with the passage of time the same was diluted and lost as the laws made by the rulers became primarily important.

In Britain, the monarch was given more importance and he was the authority who can address the interest of the subjects. Monarch was considered as a representative of God and hence the rights were only vested upon the monarch. During this time the civil rights that is, equality, liberty and justice were under developed. And it was completely dependent upon the whims and fancies of the monarch. The rights at that time were enjoyed only by the king and the members of the royal family. Common man did not have any right. Later in 1215, King John adopted Magna Carta which holds a great significance in the development of human rights. This document was helpful in protecting the subjects from the arbitrary acts of the state officials and kings. Firstly, it made it compulsory that no land or any property belonging to an individual can be seized without proper reasons and procedure. And secondly the concept of Montesquieu that no one is above law and the state and its officials have to be abide by the law. It was followed and was made compulsory for the judges to follow the laws. Now the judges cannot ignore the law and take decision on their own whims and fancies. Rather they have to well aware about the laws and had to follow and respect the same as no one is above law. The document also protected the individuals from arbitrary arrests. Hence, this helped in establishing a principle that the powers of the king are not absolute.

After 14th century the clash between the king and the pope started. The pope was shifted permanently to the Vatican city and hence, it became easy for the monarch to rule without the strong interference of the pope. Later in 1600, the king or the queen had the right to issue royal documents and this power was given to them under the Royal Charter. There were various other declarations and rights passed in different countries with the intent of providing civil rights to the people like the French Declaration, bill of rights and the constitution of united states all discussed about the right to life, liberty, free speech, equality etc to be granted to all the people as it was considered as a basic right which was given to the people by the God.

After the World War II the United Nations Charter was drafted. And at the same time the two International military tribunals were set in order to one for the trial of the Nazis leader which is also known as Nuremberg Trial and the second one was for the trial of far east generally known as Tokyo Trial. In Nuremberg Trial out of 177 defendants, 24 were given death sentence, 20 were given lifelong punishment and the 98 of them were given other sentences. In the Tokyo Trial, seven were given the punishment of death by hanging, sixteen of them were given life imprisonment while the two of the defendants died during the trial.

UNIVERSAL DECLARATION OF **HUMAN RIGHTS:**

The United Nation Charter was drafted and accepted by the 51 state representatives who were present at the San Francisco for the Conference. The significance of the Charter is based on the fact that this charter is the first official document where the term "human rights" is used and where the importance of fundamental freedom is also acknowledged. The 1948 Declaration with respect the human rights was adopted by the General Assembly on 10th December, 1948. All men, women, and children are guaranteed civil, political, economic, social, and cultural rights under the thirty Articles of the Declaration. Yet, the declaration is not a binding legal document as it is not addressing the states but rather it is addressing to the humans. Hence it lacks enforcement. It represents the highest ideals of humanity.

There was an urgent need for the removal of such deficiency and hence in December 1966 the assembly passed two covenants:

1. International Covenant on Civil and Political Rights
2. International Covenant on Economic, Social and Cultural Rights.

The Universal Declaration of Human Rights, the Optional Protocols, and the two Covenants

together make up the international human rights charter. A significant turning point in the development of human rights is the International Bill of Human Rights and is regarded as the Magna Carta of modern human rights.

RELATIONSHIP OF HUMAN RIGHTS AND FUNDAMENTAL RIGHTS:

The human rights were given importance in Indian history since the beginning. The Rig Veda itself considers right to life, bodily liberty and shelter as the basic rights and each and every individual is entitled to the same. While the other countries and the European countries adopted the concept of basic civil rights after the adoption of Magna Carta. The concept of these rights however, remained unknown to most of the countries. But due to the growing of the kingdoms and invasions the people forgot about the existence of these civil rights. In India the fight for the independence gave birth to the social rights and also the rights possessed by an individual. India was one of the signatories of the Declaration which was held for the purpose of human rights and in regard of the same the framers of Indian Constitution adopted the same in various provisions of the constitution. The Indian Constitution embodies the nation's commitment to defending and advancing the basic liberties and as well as the rights of all people.

All categories of human rights are covered in detail by the Indian Constitution. The political and civil liberties that are justified in nature and hence enforceable in court are covered in Part III³ of the document. Directive Principles of State Policy which is provided under Part IV⁴ of the constitution include the economic, social, and cultural rights. The latter are essential to national administration even though they cannot be enforced by the court. But the same can be enforced by the apex court on reasonable grounds.

Fundamental Rights:

Human rights are necessary for the existence of a fundamental right. These are those rights which are granted by the nations to their citizens in order to enjoy them. These rights are guaranteed by law. The court may also hear a case challenging these rights. Although fundamental rights are equivalent to the human rights but still there is a very slight distinction between the two. The essential distinction is that although human rights are not recognized

³ Constitution of India Act, 1950, Part III.

⁴ Constitution of India Act, 1950, Part IV

by the law and hence cannot be questioned in the court, while on the other hand fundamental rights have legal validity and may be challenged in court upon the event of a violation. The fundamental rights are provided to everyone under the Indian Constitution in the form of basic human rights clause.

These rights are enforced without any discrimination and are applied without any regard to the factors like gender, ethnicity, or religion. Importantly, under specific circumstances, fundamental rights are upheld by the courts. They are referred to as essential rights for two reasons, firstly they are embodied in the constitution. Secondly, they are safeguarded. The courts can enforce them whenever there is a breach, a person may go before a court for the enforcement of the same. The Indian Constitution consists of six fundamental rights. They are as follows: Rights to equality,⁵ freedom,⁶ protection against exploitation⁷, religious freedom⁸, access to culture and education rights⁹, and constitutional remedies.¹⁰

All these rights were included in the declaration and the same has been adopted with respect to the requirements of the people of India. Moreover, they are also part of the generations of the rights. Many provisions in part IV rights are also a part of the generations of rights.

COMPARISON OF HUMAN RIGHTS AND FUNDAMENTAL RIGHTS:

Every citizen of a country has been guaranteed certain rights under the constitution of that country which are known as the fundamental rights. While contrary to the same human rights enables a person to live with dignity and provides equality to all the humans. Legal rights are the safeguards provided by the government to citizens of a certain state. Just those rights are considered to be vital to a life of dignity. Contrarily, human rights include a number of unalienable or such rights which are not subject to exclusion. These are the rights which are essential for a real life. The fundamental rights are neither essential to a regular life nor to an absolute life.

⁵ Constitution of India Act, 1950 a. 14-18.

⁶ Constitution of India Act, 1950 a. 19-22.

⁷ Constitution of India Act, 1950 a. 23-24

⁸ Constitution of India Act, 1950 a. 28-29.

⁹ Constitution of India Act, 1950 a. 29-30.

¹⁰ Constitution of India Act, 1950 a. 32.

Fundamental rights changes from country to country and can be said to be nation specific as it completely depends upon a country to include a particular right under its constitution or not. The human rights are said to be universal in nature as it remains same for each and every person irrespective of the race, place, nationality etc of any person. So these are those rights which are basic for all and are also enjoyed by them. Similar to basic rights, there are legal rights that apply to all residents of a state and are available to all, and may be altered or modified at the will or need of the government. The core idea of the liberty guaranteed depends upon the basic rights. In contrast, the right to a dignified existence is the cornerstone of human rights.

There are certain rights which are guaranteed under the constitution of any country. Contrary to this, the human rights are those rights which are universal in nature and is applicable everywhere. Legal rights are those which differs according to the wishes of the government and hence keeps on changing, they are such rights which are not guaranteed under the constitution. Logically, both the human rights and fundamental rights can be claimed by any person and are also enforceable. The violation of fundamental rights or any of the constitutional rights can be brought before the court and the same can be enforced by the court of law. The human rights can be enforced by the United Nations organization. The legal rights are those which are made by the government and hence the enforcement of the same can be made by the government itself. These legal rights are not absolute in nature and hence, they can be withdrawn by the government at any point of time. If the government of a state changes then there are large probability that the legal rights will also change as the new government will come up with the new rights.

Fundamental rights can be suspended during the time of emergency on reasonable and lawful grounds while the human rights can never be suspended. Human rights can neither be renounced by any person and moreover, even during the wars the human rights cannot be suspended.

JUDICIAL DEVELOPMENT:

The fundamental rights have been guaranteed and upheld by the Apex court in many cases. The Supreme Court is the guardian of the constitution and hence it is the responsibility of the Supreme Court to protect the rights which are guaranteed under the constitution of India.

In the National Legal Services case¹¹ the court was of the view that the word “person” used under the article 14¹² not only is limited to include only males and females but it would also include the transgender who are not considered as a male or a female. The transgender being the third gender are also persons and are also entitled to be protected by the laws everywhere in the society. They are also entitled to healthcare, employment, right to education, equality before law, non discrimination on the basis of gender as is enjoyed by the other citizens.

In the Naz Foundation¹³ case the high court of Delhi was of the view that that the homosexuality which is criminalized under section 377¹⁴ is unconstitutional in nature. As the same is violating the rights which are protected and guaranteed under article 14, article 15 and article 21¹⁵. The court further said that it is the personal choice of any person and hence the sexual autonomy of a person cannot be violated if the same is done in isolation.

In the Romesh Thapar¹⁶ case, the supreme court held that the media is considered as the fourth pillar of any democratic country and hence the media and the press can exercise its freedom of speech and expression. It was related to article 19¹⁷ of the constitution. If the media is not allowed to function independently then no impartial discussions can be seen which would ultimately led to no public education. Hence the press should be kept separate from the political influence. So that it can discuss the actual performance of the government and with which the people can be made aware. Moreover, the number of pages cannot be restricted as it would also affect the quality of the news provided by the newspaper.

In the case of Indian Express Newspaper¹⁸ it was held that the press is one of the major pillar in the democratic society. The press has the freedom of expression without which the press will fail to function independently. And this can led to misinformation, insufficient information and at times it may lead to one side information or no information at all which would ultimately defeat the purpose of the press. It would also affect the liberty of circulation and publication of the newspaper which would have larger impact on the newspaper.

¹¹ National Legal Services Authority v. Union Of India, AIR 2014 SC 1863

¹² Constitution of India Act, 1950 a. 14.

¹³ Naz Foundation v. Govt of NCT of Delhi, 160 Delhi Law Times 277, p. 2.

¹⁴ Indian Penal Code, 1860, s. 377.

¹⁵ Constitution of India Act, 1950 a. 14,15,21.

¹⁶ Romesh Thapar v. State of Madras AIR 1950 SC 124.

¹⁷ Constitution of India Act, 1950 a. 19.

¹⁸ Indian Express Newspapers v. Union of India 1950 S.C.R. 594.

In the case of Maneka Gandhi¹⁹, it was held that every person has right to life which is provided under article 21²⁰. The state cannot use arbitrary means to take away the article 21 of any person. The due process of law has to be followed. Moreover, article 21 not only refers to mere existence but it also deals with the human dignity. Hence every person has the right to live with dignity.

In the case of Francis Coralie²¹, the court was of the view that the right to life under article 21 is very wide in its application. It also includes the basic necessities of a person that is, right to food, shelter and clothing which is very essential for the life. It also includes educational rights as it helps in overall development of the person and also enhances their thinking ability. It includes the free movement of any person and all those functions which are necessary for constituting human self. Thus right to life means right to life with dignity.

CONCLUSION AND SUGGESTIONS

The Indian constitution was highly influenced by the human rights and hence in order to protect and provide the same to the people the framers of the constitution has included it in the part III²² and part IV²³ rights. The former deals with fundamental rights which are the essential part relating to the human rights. The same is very wide in application and it also has developed various sub rights with the passage of time. In India, the judiciary has a considerable impact on the defense of human rights. There is a evolution of the Indian courts into the courts of the oppressed and struggling masses and have opened their doors to the underprivileged, uneducated, illiterate, and oppressed as well as to every citizen. The social activists are also been aiding those who have experienced violations of their human rights in their local communities to seek justice in a variety of forums. Students participating in the program also engage in human rights activism in their home areas. Yet in addition to those programs, the government also has a duty to guarantee the physical security guaranteed by our Constitution. As a result of the human rights education program in their schools, some students have come forward with startling revelations about changes in their perspective and conduct. So, it is essential to make even significant efforts in order to eliminate social inequalities and ensure that everyone has access to high-quality education. A vital requirement in the process of

¹⁹ Maneka Gandhi v. Union of India (1978) 1 SCC 248

²⁰ Constitution of India Act, 1950 a. 21

²¹ Francis Coralie v. Union Territory of Delhi [1980] 2 SCR 557

²² Constitution of India Act,1950, Part III

²³ Constitution of India Act,1950, Part IV

transforming India into a developed society, fulfilling the universal access to those resources for surface level development is crucial.

Human rights today encompass more than just the right to an existence in dignity. Human rights are divided into three generations by an international institute that is, Human rights of the first generation are essentially civil and political in nature and is also individualistic; those of the second generation are fundamentally economic, social, and cultural in nature; they ensure that all citizens are treated equally; and those of the third generation are the freedom of self-determination and the right to development.

In the end, the judicial body in India is acting an unmatched role in the Indian history around the world despite many ups and downs. So, it must demonstrate that it deserves the public faith and confidence. As this alone will earn it the respect of the masses, the judiciary must expand beyond its traditional role of resolving disputes between parties and instead work to advance the country and build a social order where all citizens have access to the basic essential necessities of a civilized life, such as employment, housing, medical care, and education

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