



## HUMAN RIGHTS IN INDIA - AN OVERVIEW

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### **Introduction**

Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian sub continent over a very long stretch of time. As Jawaharlal Nehru rotes, there is "an unbroken continuity between the moist: modern and the most ancient phases of Hindu thought extending over- three thousand years." <sup>1</sup>The rights of man have been the concern of all civilizations from time immemorial. "The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods." <sup>2</sup>The Babylonian Laws and the Assyrian laws in the Middle East, the "Dharma" of the Vedic period in India and the jurisprudence of Lao-Tze and Confucius in China, have championed human rights through history of human civilization.

The Indian concept perceives the individual, the society and the universe as an organic whole, everyone is a child of God and all fellow beings are related to one another and belong to a universal family. In this context, Mahatma Gandhi remarks, "I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general" <sup>3</sup>.

### **Human Rights and the Indian Constitution**

The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term 'democratic' denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal "irrespective of the r race, religion, language, sex and culture." The Preamble to the Constitution ledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens<sup>4</sup>.

The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion and educational rights and the right to Constitutional remedies. Fundamental rights differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, which is volatile of any of the fundamental right, is void. In *ADM Jabalpur vs. Shukla*, Ju'stice Beg observed "the object of making certain general aspects of rights fundamental is to guarantee them against illegal invasion of these rights by executive, legislative, or judicial organ of the State." Earlier, Chief Justice Subba Rao in *Golak Nath vs. State of Punjab* had rightly observed, "Fundamental rights are the modern name for what have been traditionally known as natural rights<sup>5</sup>,"

The Supreme Court of India recognizes these fundamental rights as 'Natural Rights' or 'Human Rights'. While referring to the fundamental rights contained in Part III of the Constitution, Sikri the then Chief Justice of the Supreme Court, in *Keshavananda Bharati vs. State of Kerala*," observed, "I am unable to hold these provisions to show that rights are not natural or inalienable rights. As a matter of fact India was a party to the Universal Declaration of rights and that Declaration describes some fundamental rights as inalienable." The Chief Justice Patanjali Shastri in *State of West Bengal vs. Subodh Gopal Bose* referred to fundamental rights as those great and basic rights, which are recognized and guaranteed as the natural rights inherent in the status of a citizen of a free country.

Article 14 of the Indian Constitution proclaims the general right of all persons to equality before the law, while Article 15 prohibits the State from discriminating against any citizen on grounds of religion, race, caste, sex or place of birth, and prohibits any restriction on any citizen's access to any public place, including wells and tanks. Equality of opportunity for all citizens in matters of public employment is guaranteed under Article 16.

Article 17 abolishes un touch ability and makes its practice an offence punishable under law. Both Articles 15 and 16 enable the State to make special provisions for the advancement of socially and educationally backward classes, for such castes and tribes as recognized in the Constitution (known as the Scheduled Castes and Scheduled Tribes) require very special treatment for their advancement. Article 18 abolishes all non-military or non-academic titles.



The right to freedom guaranteed to all citizens under Article 19 encompasses the right to freedom of speech and expression, the right to assemble peaceably without arms, the right to form associations or unions, the right to move freely throughout the territory of India, the right of residence, and the right to practice any profession, or to carry on any occupation, trade or business. The protection of a person in respect of conviction of offences under Article 20 includes protection against ex post facto criminal laws, the principle of convict and the right against self-incrimination. Article 21, the core of all fundamental rights provisions in the Indian Constitution, ordains: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 21A was added to the Constitution by the Eighty Sixth Constitutional Amendment Act 2002.

Article 21A proclaims "the State shall provide free and compulsory education all children of the age of six to fourteen years in such manner as the State may, by law, determine." The rights of a person, arrested and detained by the State authorities, are provided in Article 22. These include the, right to be informed of the grounds of arrest, the right to legal advice and the right to be produced before a magistrate within 24 hours of arrest (except where one is arrested under a preventive detention law). The right against exploitation includes prohibition of trafficking in human beings and forced labour (Article 23), and prohibition of employment of children below 14 years of age "to work in any factory or mine or in any other hazardous employment." Subject to public order and morality, all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion (Article 25). Every religious denomination or section also has the right to establish and maintain religious institutions and manage their religious affairs (Article 26). No one may be compelled to pay any religious taxes (Article 27). The wholly State-funded educational institutions are barred from imparting religious instructions (Article 28)<sup>6</sup>.

The rights of any section of citizens or a minority to promote its distinct language, script or culture, to have access to State-funded educational institutions, and to establish and maintain educational institutions of its choice (Article 30) are also guaranteed. The right to Constitution remedies is essentially the right to move the Supreme Court of India for enforcement of the above rights (Article 32). The Supreme Court is vested with wide Constitutional powers in this regard. They include the power to issue directions, orders or writs for the enforcement of the fundamental rights (Article 32(2)). State (i.e. provincial) High Courts too have identical powers (Article 226).

As laws inconsistent with or in derogation of the rights conferred by part III of the Constitution is void (Article 13), the Courts have the power to adjudge the Constitutional validity of all laws. Furthermore, by virtue of Article 141, the law declared by the Supreme Court shall be binding on all courts in India. Fundamental rights guaranteed under the Indian Constitution may be divided, for the sake of convenience, into two categories viz., specified fundamental rights and other fundamental rights (rights not specifically enumerated)<sup>7</sup>.

### **Fundamental Rights for Citizens Only**

The Indian Constitution has classified fundamental rights into two categories:

1. Fundamental rights which are available to citizens only;
2. Fundamental rights available to all persons residing within the territory of India for the time being and subjected to its jurisdiction. The first of the category, which is available to the citizens includes:
  1. Article 15 relating to prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.
  2. Article 16 relating to equality of opportunity for all citizens in matters of public appointment
  3. Article 19 relating to protection of rights
    - a. Freedom of speech and expression
    - b. To assemble peaceably and without arms
    - c. To form associations or unions
    - d. To move freely throughout the territory of India
    - e. To reside and settle in any part of the territory of India
    - f. Article 19(1) (f) relating to the right to own and acquire property was deleted by the Constitution 42<sup>nd</sup> Amendment Act 1978 with effect from 20-06-1979.
    - g. To practice any profession or to carry on any occupation, trade or business.
  4. Article 29 relating to protection of interests of minorities – the second category of fundamental rights comprise the remaining fundamental rights which use the word 'Person.' In *Hans Muller of Nuremburg v. Superintendent Presidency Jail Calcutta*. It was laid down in the judgment that Article 19 applies only to citizens. Fundamental rights mentioned in Article 19, which contains the right to "basic freedoms", are available only to the citizens of the country. The word 'citizen' that



occurs in the above Article has not been used in a sense different from that in which it has been used in part II of the Constitution dealing with citizenship<sup>8</sup>.

### **Political Rights and Human Rights**

India is the largest representative democracy in the world, based on universal adult suffrage, providing every Indian of at least eighteen years of age the right to vote. The Constitution provides for direct elections to the House of the People of the Central Parliament, i.e. the Lok Sabha and the State (Provincial) Legislative Assemblies, once in every five years at the latest. The members of the State Legislatures do the elections to the Council of States, i.e. Rajya Sabha, which is the upper house of Parliament. The elected members of Parliament and State Legislative Assemblies elect the President. Both the Houses of Parliament together elect the Vice-President.

The right to vote, the right to contest elections, and the conduct of elections are all governed by the Constitution (Part XV) as well as special laws like the Representation of the People Act, 1951. The Constitution provides for an independent Election Commission (Article 324), which has in fact acquitted itself quite admirably in the recent elections, both provincial as well as parliamentary, and set an agenda for clean elections and elimination of the criminal - politician nexus<sup>9</sup>.

### **Judiciary and Human Rights**

Of the three organs of Government, the judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the Constitution. The Supreme Court of India has in the case *Ajay Hasia vs. Khalid mujid* declared that it has a special responsibility, "to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence."

As has already been pointed out the Supreme Court of India and the State High Courts have broad powers under the Constitution to enforce the fundamental rights and they have liberally interpreted these powers. The major contributions of the judiciary to the human rights jurisprudence have been two-fold:

- a. The substantive expansion of the concept of human rights under Article 21 of the Constitution,
- b. The procedural innovation of Public Interest Litigation<sup>10</sup>.

### **Some Other Measures of Protection of Human Rights under Indian Law**

1. The Protection of Civil Rights Act, 1955
2. Suppression of Immoral Traffic in Women and Girls Act, 1956
3. Maternity Benefit Act, '1961
4. Dowry Prohibition Act, 1961
5. Equal Remuneration Act, 1976
6. Bonded Labour (Abolition) Act, 1976
7. Employment of Child Act, 1938 (Amended in 1985)
8. The Child Labour (Prohibition and Regulation) Act, 1986
9. Juvenile Justice Act, 1986
10. Indecent Representation of Women (Prohibition) Act, 1986
11. Sati (Prevention) Act, '1987
12. The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
13. The National Commission for Women Act, 1990
14. The National Commission for Minorities Act, 1992
15. The National Commission for Scheduled Castes Act, 1993
16. The National Commission for Backward Classes Act, 1993
17. The Mental Health Act, 1987
18. The Persons with Disabilities (Equal opportunities, Protection of Rights and Full Participation) Act, 1995<sup>11</sup>.

### **Conclusion**

The Indian Constitution is a document rich in human rights jurisprudence. This is an elaborate charter on human rights ever framed by any State in the world. Part III of the Indian Constitution may be characterised as the 'Magna Carta' of India. The Judiciary in India plays a significant role in protecting human rights. The Indian Courts have now become the courts of the poor and the struggling masses and left open their portals to the poor, the ignorant, the illiterates, the downtrodden, the have-nots, the handicapped and the half-hungry, half-naked countrymen.



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