

## SYNOPSIS OF HUMAN RIGHTS AND THE ROLE OF JUDICIARY

*Author: Divyansh, II year of B.B.A.,LL.B.(Hons.) from Amity University, Patna*

### **ABSTRACT**

Human rights are recognized as progression of values and spirituality which are bestowed on humans since birth. "Human rights" are the fundamental and compilation of rights which are provided to every citizen without any discrimination in context of their gender, caste, race. These rights primarily includes right to freedom, right to personal liberty, right to equality and other rights which requires realization ethics and moral values to ensure and protect human dignity. The present begins with the introduction Human rights along with its characteristic features. The vast concept of human rights is absolute and as old as history of man. Secondly, the article illustrates the historical background of human rights in India which can be relatively traced back in the Vedic era. Human rights have been assimilated from the beginning of civilization which compelled the individual to live in a civilized society in a lawful manner. Secondly, the article deals with concept of human rights violations by the state itself. Thirdly, the article focuses on the National Human Rights Commission and judiciary which made remarkable contributions in enforcing human rights in India. Human rights cannot be taken away by any authority except certain situations. It enunciates cultural and religious developments, thus provides stability to the country.

**Keywords:** Human Rights, fundamental, Judiciary, Vedic, civilization

### **INTRODUCTION**

Human beings have been considered as the most evolved and complex social living beings who started the system of living in a society and are provided with certain rights named as "Human Rights" which are the basic entitlements and globally recognized rights and are considered very important for individuals physical, spiritual and mental wellbeing. The word "Human" signifies mankind and the word "Right" is derived from Latin word Rectus which means straight and correct. Rights have been regarded as essential factor without which humans cannot sustain. These rights primarily targets the Humanity and are provided to Human beings without any discrimination of caste, sex, race and religion. Human Rights are the rudimentary rights which

ensures that people are measured with respect, balance and harmony. Human Rights are a part of global law and guarantees dignity as human beings.

*“All Human Beings are born free and equal in dignity and rights”<sup>1</sup>*

The acceptance of human rights has come into acknowledgement because of individual's long struggle. Every person is equal in the aspects of law and no person shall be deprived of their fundamental rights. Human Rights aims at protecting people from religious and political abuses happening all around. The foundation of Human Rights is absolute and not a new concept. The objective and belief of Human Rights is to ensure that everyone is treated with respect in the society

### **CHARACTERISTIC FEATURES OF HUMAN RIGHTS**

Human rights are the sets of principles concerned with dignity and equality. These rights can be described as the basic right which includes right to life, freedom from torture, freedom of speech, right to freedom to religion. These are moral claims which are articulated and named as Human Rights which is inalienable in all individuals without discrimination on the basis of caste, race, ethnic background.

- **Human Rights are Universal:** Human Rights are Universal in nature because everyone possesses equal rights regardless of their gender, caste, race, ethnic background and where they live. No privileged people can possess monopoly over Human rights. Human nature is inherent with values such as equality, divinity and dignity.
- **Human Rights are Inalienable:** Human rights are such rights which cannot be given away or humans cannot renounce such rights just because they are not inherited by any authority. Human rights cannot be bought or earned in any way.
- **Human Rights are Irrevocable in nature:** Human Rights are Irrevocable which means no authority can curtail such rights from humans which are sacrosanct. These rights begin from birth and originates from the social nature of Humans.

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<sup>1</sup>United Nations, *Universal Declaration of Human Rights*, Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>, (Accessed: August 15, 2021, 9.30 PM)

- **Human Rights are Important and Necessary:** The ethics and societal welfare developments of individual sounds impossible without Human Rights. Thus, these are considered the basis of the survival. Human Rights are regarded as “*Indispensable*” as they provide a satisfactory environment to develop moral values of society.
- **Human Rights Advocates Dignity:** The major concern of Human Rights is to treat others with dignity and respect whether the person is rich or poor, male or female. No one should be discriminated on the grounds of ethnicity, age, religion, caste or on the basis of their sexual orientation. Dignity should be properly maintained among individuals.
- **Human Rights are Participative in nature:** Everyone should have the right to participate in the decision- making process and are entitled to make contribution in economic, social and political issues.
- **Human Rights are Dynamic:** Human Rights are dependent on the change in economic, social, political structures of the state. Therefore, they are ever changing in nature and goes on expanding.

### HISTORY OF HUMAN RIGHTS IN INDIA

The contemporaneous history of Human rights has evolved over centuries which can be traced from the *Vedic* period. India ingrained the theory of human rights which were later discovered by the West. Humans struggled for their existence since the beginning of the history for achieving freedom and liberty. The struggle led to the beginning of the concept of Human Rights in India. Human Rights assumed to be *Equality* in the Vedic era. Human Rights have been regarded as the crystallisation of moral values from the historical point of view which has become a great aspect on international contemporary interests

#### **Ancient India**

The ancient period articulated informative ideas to promote harmony and freedom in India. The concept of Human Rights seemed to be in rudimentary form. The ancient history generously encouraged dignity and equality among people. In ancient period, Kautilya was the one who requested

the king to protect the rights of people which was considered a tremendous step towards enforcement and protection of man rights. In the Hindu empire, people enjoyed several rights. Also, *Ashoka* broadly worked on the protection of Human rights by establishing a welfare state and providing people with opportunities. His chief motive was to promote Liberty. The Ancient India mainly stood for empowering and encouraging freedom, liberty and dignity by developing ideas on Human Solidarity.

### **Medieval India**

The Medieval Era popularly known as Pre-Mughal period or the Muslim era. Hindus were abruptly criticised by the Muslim fundamentalists because they constrained on Hindu communities to follow their culture and religion. They were strictly told that they don't deserve any rights due to which the Indian leaders started feeling that their rights have been infringed. But during the rule of *Akbar*, certain positive changes were brought like Hindus were made free to practice their own customs and religion. Great importance was given on Secularism and Unity. During this period, popular movements like the "*Bhakti*" in Hindus and "*Sufi*" movement in Islam emerged which made excellent remarkable contributions in the enforcement of Human Rights

### **British Era**

Major enhancements of Human rights were made during the British era. Indians were brutally tortured by the Britishers in context of their religion, race and colour. Their rights were totally infringed in the colonial period. Furthermore, high demands for the basic fundamental rights shared rising and soon appeared in the Constitution in the form of Bill 1895. The Bill contained the provisions of right to freedom, equality, right to Expression and personal liberty. Later, in 1927 a committee was formed which suggested several fundamental rights to be abolished. The Constitution of India then incorporated several Fundamental rights suggested by the committee

## **CONCEPT AND TYPES OF HUMAN RIGHTS VIOLATIONS**

The human rights violation is a curse to humanity. Instances of heinous torture, violence are coming on regular basis. It is the duty of the state to maintain the social framework by implementation of laws. The state is lawfully bound to protect citizens rights but if it fails to do

so then, it results in human right violation. States indirectly or directly commits Human rights violation by involving police, judges and government officers. The cases of extreme torture in extrajudicial killings addressed the accountability for police abuses. The Human rights violation mainly arises when the state does nothing to stop the conflicts arising between the vulnerable groups in the society. The ramification of violations affects people drastically.

The “Civil and political rights” which signifies right to personal liberty, right to equality, right to fair trial and are regarded as first generation rights seemed to be violated in many ways such as arbitrary arrest and torture. These violations mostly happen during world wars. Sexual exploitation among woman, child labour, religious discrimination and Human trafficking are the serious issues happening all around. The “Economic and Social rights” which addresses right to education, right to physical health, right to work are also violated by the States. The violations can be in the form of denying services related to healthcare, discriminating at work place, not paying wages, segregating childrens on their disabilities in terms of education and subjugation of women.

### **CAN HUMAN RIGHTS BE TAKEN AWAY FROM INDIVIDUALS?**

An individual’s right cannot be taken away from them, which signifies irrevocable nature of human rights. The Universal Declaration of Human rights clearly states that no authority nor the state can perform any such act which results in the destruction of persons rights. Human rights<sup>2</sup> cover virtually every area of human activity. On televisions, social media and on newspapers, we see tragic incidents of human rights abuses, murder, racism and domestic violence.

*“No person shall be subjected to inhuman treatments and heinous torture. The Universal Declaration of Human rights proved that India incorporated the subject of human rights when the constitution was adopted”.*

Human rights can be restricted in specific situations especially when a person breaks the law. There has been a tremendous growth in the perception on people in the last few decades. It is

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<sup>2</sup>Australian Human Rights Commission, *An Introduction to Human rights*, Available at: <https://humanrights.gov.au/our-work/education/introduction-human-rights> , (Accessed: Aug 17, 2021, 5.30 PM)

easy to promote equality and justice when people understand human rights and can offer informative solutions of specific problems in the society.

### **ROLE OF NATIONAL HUMAN RIGHTS COMMISSION**

*“National Human Rights Commission is a unique body which comprises of few National Human Rights Institutes with Chief Justice as its Chairpersons and plays a proactive and supplementary role in coordinating with such institutes from the Human Rights perspective “*

The concept of human rights has been expanded through judicial activism. India showed eagerness in strengthening the national institutes for human rights protection. National Human Rights Commission which has been established by the Parliament on 12<sup>th</sup> October 1993 under the Human Rights Act, 1933 has aimed at performing commendable job during its existence by dealing with certain human rights issues. NHRC plays a pivotal role and has basic functions to safeguard the rights of individual. The functions of National Human Rights Commission is to:-

- I. To actively intervene and conduct grievances related to the matters of human rights violations such as violations of right to equality, liberty and freedom. It can keep a regular check on the detainees by visiting jails and can make recommendations to the government.
- II. National Human rights Commission keeps a check on the unemployment cases and can suggest certain measures to the same.
- III. To promote and spread proper awareness and undertakes research among the masses and introduces individual to the mechanics of human rights
- IV. The members of National Human rights commission can ensure the implementation of international human rights according to International treaties.
- V. NHRC has the power to intervene in Judicial proceedings adhering to Human Rights abuses.

### **HUMAN RIGHTS AND THE INDIAN JUDICIARY**

*“Judiciary is considered as the guardian and armour of human rights which protects the enumerated rights of people granted by the Constitution of India”*

The lower marginalised and oppressed sections of the society are prone to Human rights abuses. The independent part of the government i.e; judiciary plays a crucial role in enforcing the constitutional rights from states. It has been noticed that the Indian courts protects the human rights with little success. There are end numbers of reforms in Indian Judiciary to address human rights. The supreme court of India articulated remarkable contribution to protect human rights and enlarged the aspects of fundamental rights. The sanction is provided to the Judiciary by the Constitution for delivering justice which is a task to safeguard rights of Indian citizens.

Police machinery is essential machinery in enhancing human rights. The sensitive nature and political pressure from leaders make it onerous for the police to investigate the violations. Many atrocities cases were in hands of police and Narcoanalysis was quite common techniques used by police for the accused to secure a confession. In *Smt. Selvi Vs. State of Karnataka*<sup>3</sup>, the supreme court declared that Narcoanalysis, lie detection tests violates the fundamental rights guaranteed by the Constitution. These practices cannot be forcibly tested on any individual without prior consent. Article 21 deals with the personal liberty which means that the protection of life is granted.

Similarly in the case of *Sunil Batra Vs. Delhi Administration*<sup>4</sup>, the supreme court observed that Article 21 excludes deprivation of liberty. Also, the court addressed the distinction of physical and mental privacy and rejected the doctrine of hands off. Further the court also laid down importance of choice to speak and intersection with personal autonomy. Therefore, judiciary played an important role by introduced new scopes of rights for people to enjoy their rights. Numerous cases of human rights have been protected by the Supreme Court against prisoners. The excellent functioning of the judiciary showed that it exercised its power in innovative way by devising new strategies to ensure the protection of human rights.

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<sup>3</sup>2010 (7) SCC 263

<sup>4</sup>AIR 1978 SC 1675

**CONCLUSION**

Human rights are considered an important aspect for the development of people and their rights through various conventions and treaties. Despite constitutional and legislative measures, Indian judicial pronouncements played a pivotal role in human rights protection. The roots of human rights are adversely being hit by Terrorism which tends to hamper the provisions of rights of people. Prolonged actions are mandatory to secure human rights by the vulnerable groups. Proper awareness about Human rights must be circulated in the country. Free and compulsory education among children must be implemented expeditiously. Also, the inculcation of proper governance will achieve the objective. In recent years, there have been serious concerns regarding protection of human rights. The protection of rights should be a national concern among people. The idea of Equality, justice which is quoted in the Constitution can be only be accomplished by upholding supreme message of fraternity among people. This can ensure dignity among citizens.

**BRILLOPEDIA**