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Evolution of Human Rights

APEKSHA GAUR¹ AND RISHIKA²

ABSTRACT

This paper seeks to analyse what is human rights. how human rights evolution happened, classification of human rights. Define the difference between fundamental rights and human rights. Human rights are being protected by the law and human rights related organisations keep check and ensure that the rights are being protected or not.

Human rights are the basic rights of every human regardless of where they belong, gender differences, color, race, language and money. The movement of human rights was started in Europe. In the era of industrialization, when laborers were losing their jobs because of installments of new machinery and they were facing a very critical situation, millions of people were jobless, they did not even have money to buy food, they were homeless and also basic needs of food and shelter were not being fulfilled. So, then the movement of human rights started. After independence, India played a very important role in protecting these rights. The Indian judiciary in India has played a key role in turning these rights into reality. Consequently, the court has adopted all legislative, administrative and judicial or quasi-judicial agencies within the scope of the law, acting as the supreme interpreter, protector and guardian of the constitution. The judiciary has the responsibility to review all government actions.

I. INTRODUCTION

Human rights being essential for all round development of the personality of the individuals in the society be necessarily protected and be made available to all the individual. They must be preserved, cherished and defended if peace and prosperity are to achieved.

Human rights are the very essence of a meaningful life, and to maintain human dignity is the ultimate purpose of the government. The need for the protection has arisen because of inevitable increase in the control over men's action by the governments which by no means can be regarded as desirable. There are several states where fundamental standards of human behaviour are not observed. The consciousness on the part of the human beings as to their rights are also necessitated the protection by the states.

Human rights are legal because it has legal, moral and political bearing. Human rights are legal

¹ Author is a student at Asian Law College, India.

² Author is a student at Asian Law College, India.

because it involves the implementation of rights and obligations mentioned in International treaties. It is moral because human rights are a value-based system to preserve human dignity and it is political in the larger sense of word. They also operate to limit the power of governments over individuals. However, one will not hesitate to admit that there is a confusion prevailing as to its precise nature and scope and the mode of international law as to the protection of these rights.

II. WHAT IS HUMAN RIGHTS?

Human rights are rights we have simply because we exist as human beings. They are not granted by state. These universal rights are inherent to us all, regardless of nationality, sex, national, or ethnic origin, color, religion, language or any other states. These rights are the basic rights and freedom that belong to every person in the world, from birth until death.

They can never be taken away, although they can something be restricted if a person breaks the law or national securities. The basic human rights are right to life, right to dignity, fairness, equality, respect and independence.

According to section 2(d) of the protection of human right act 1993, Human rights means the right relating to life, liberty, equality, and dignity of individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India.

According to Susan Moller Okin, Human rights as a claim to something of crucial importance for human life.

According to Dr. Purohit, Human rights are the basic values which underlie that human beings, born in any part of the world are equal in dignity and rights.

III. HISTORY OF HUMAN RIGHTS

In 539 B.C the armies of Cyrus the great, the first king of ancient Persia, conquered the city of Babylon. But it was his next action that marked a major advance for man. He freed the slaves, declared that all the people had the right to choose their own religion and established racial equality. These and other decrees were recorded on a baked- clay cylinder in the Akkadian language with cuneiform script. Known today as the Cyrus cylinder, this ancient record has now been recognized as the world's first charter of human rights. It is translated into all six official languages of the United Nations and its provisions parallel the first four articles of the Universal Declaration of Human Rights.

From Babylon, the idea of human rights spread quickly to India, Greece and eventually Rome. There the concept of "natural law" arose, in observation of the fact that people tended to follow

certain unwritten laws in course of life, and Roman law was based on rational ideas derived from the nature of things.

Documents asserting individual rights such as Magna carta (1215), The Petition of Right (1628), The U.S Bill of Rights (1791) are the written precursors to many of today's rights Documents.

THE MAGNA CARTA (1215)

In 1215, after King John of England violated a number of ancient laws and customs by which England had been governed, his subjects forced him to sign the Magna carta, which enumerates what later came to be thought of as human rights. Among them was the rights of church to be free from governmental interference, the rights of all free citizens to own and inherit property to and to be protected from excessive taxes.

It established the right of widows who owned property to choose not to remarry and established principles of due process and equality before the law. It also contained provisions forbidding bribery and official misconduct. Widely viewed as one of the most important legal documents in the development of modern democracy, the Magna carta was a crucial turning point in the struggle to establish freedom.

PETITION OF RIGHT (1628)

The next recorded milestone in the development of human rights was the Petition of Right, produced in 1628 by the English parliament and sent to Charles 1 as a statement of civil liberties. Refusal by parliament to finance the king's unpopular foreign policy had caused his government to exact forced loans and to quarter troops in subjects houses as an economic measure. The petition of right, initiated by Sir Edward Coke, was based upon earlier statutes and charters and asserted four principles:

1. No taxes may be levied without consent of parliament
2. No subject may be imprisoned without cause shown (reaffirmation of the right of habeas corpus)
3. No soldiers may be quartered upon the citizenry
4. Martial law not be used in time of peace

UNITED STATES DECLARATION OF INDEPENDENCE (1776)

On 4 July 1776 the United States Congress approved the Declaration of Independence. Its primary author, Thomas Jefferson wrote the Declaration as a formal explanation of why Congress had voted on 2 July to declare independence from Great Britain, more than a year after the outbreak of the American Revolutionary War and as a statement announcing that the 13

American colonies were no longer a part of British empire. Congress issued the Declaration of Independence in several forms. It was initially published as a printed broadsheet that was widely distributed and read to the public.

THE CONSTITUTION OF THE UNITED STATES OF AMERICA (1787) AND BILL OF RIGHTS (1791)

Written during the summer of 1787 in Philadelphia, the constitution of the United States of America is the fundamental law of the US federal system of government and the landmark document of the western world. It is the oldest written national constitution in use and defines the principal organs of government and their jurisdictions and the basic rights of citizens. The first ten amendments to the constitution the bill of rights came into effect on December 15, 1791 limiting the powers of the federal government of the United States and protecting the rights of all citizens, residents and visitors in American territory.

The bill of rights protects freedom of speech, freedom of religion, the right to keep and bear arms, the freedom of assembly and the freedom to petition. It also prohibits unreasonable search and seizure, cruel and unusual punishment and compelled self-incrimination.

THE FIRST GENEVA CONVENTION (1864)

In 1864, sixteen European countries and several American states attended a conference in Geneva, at the invitation of the Swiss Federal Council, on the initiative of the Geneva committee. The diplomatic conference was held for the purpose of adopting a convention for the treatment of wounded soldiers in combat. The main principles laid down in the convention and maintained by the later Geneva Conventions provided for the obligation to extend care without discrimination to wounded and sick personnel and respect for marking of medical personnel transports and equipment with the distinctive sign of the red cross on a white background.

IV. CLASSIFICATION OF HUMAN RIGHTS

1. Civil and political rights (First generation rights)

Civil rights or liberties are referred to those rights which are related to the protection of the right to life and personal liberty. They are essential for a person so that he may live a dignified life. Such rights include right to life, liberty and security of persons, right to privacy, home and correspondence, right to own property, freedom from torture, inhumane and degrading treatment, freedom of thought, conscience and religion and freedom of movement.

Political rights may be referred to those rights which allow a person to participate in the government of a state. Thus, right to vote, right to be elected at genuine periodic elections, right to take part in the conduct of public affairs, directly or through chosen representative are

instances of political rights.

2. Economic, social and Cultural rights (Second generation rights)

Economic, social and cultural rights (so called 'freedom to') are related to the guarantee of minimum necessities of the life to human beings. In the absence of these rights the existence of human beings is likely to be endangered. Right to adequate food, clothing, housing, and adequate standard of living and freedom from hunger, right to work, right to social security, right to physical and mental health and right to education are included in this category of rights. These rights are included in the International covenant on Economic, Social and Cultural Rights.

3. Collective rights (Third generation)

Collective rights also known as group of rights. These are the rights which belong to all people so that members of all groups may be benefited. These are the rights which do not vest in, nor is exercised by an individual alone like traditional rights. The concept of collective rights emerged because individual human rights do not guarantee adequate protection for indigenous people.

Collective rights guarantee the development and preservation of minorities and form of organization.

V. DISTINCTION BETWEEN FUNDAMENTAL RIGHTS AND HUMAN RIGHTS

The primary contrast between Fundamental rights and Human rights is that the Fundamental rights are particular to a specific nation, while human rights have overall acknowledgement. Fundamental rights and Human rights are essential for the presence and improvement of people. It makes a superior domain and better living conditions for individuals, and in addition they protect their nobility.

FUNDAMENTAL RIGHTS

These are the rights that are conceded by an administration. These rights are granted through the country's constitution and all individuals that fall under the ward of the constitution are conceded these rights without assumption or cost of the benefit. Fundamentally, these are the rights that are granted to all subjects according to the lawful arrangement of the nation with no conditions.

Fundamental rights are described in part 3rd of the constitution of India. These rights give individuals insurance from onerous governments and place an obligation on the administration to maintain them. They are important to the point that on the off chance that they are damaged by the legislature, any individual has a privilege to approach the high court or the supreme court specifically without setting off to the lower court for alleviation.

HUMAN RIGHTS

Human rights are all-inclusive, supreme and essential good claims, as they have a place with every individual, they are basic and are fundamental to genuine living. These are basic for everyone of the people regardless of their position, caste, creed, belief, nationality, place of birth, citizenship, and some other status. All people appreciate a similar human right, with no segregation.

Human rights are fundamental privileges of the general population that backer reasonableness, balance, opportunity and regard for all. These are critical for the improvement of the general public, as it cancels different practices like foul play, abuse, separation and imbalance.

OBJECTIVES OF HUMAN RIGHTS

1. The very first objective of human rights is to protect human beings from any kind of discrimination and injustice all over the world.
2. The second objective of human rights is to develop individual self-respect.
3. The third objective is to value human dignity.
4. The fourth objective of human rights is to promote and develop respect understanding and appreciation of diversity.
5. The fifth objective of human rights to promote democracy, social justice, friendship and brotherhood to gain unity in diversity.

VI. ROLE OF HUMAN RIGHTS COMMISSION IN INDIA

The National Human Rights Commission, India has been set up by an act of parliament under the Protection of Human Rights act, 1993 for the protection and promotion of human rights. The functions of the commission as stated in section 12 of the act and apart from enquiry into complaints of violation of human rights or negligence in the prevention of such violation by a public servant, the commission also studies treaties and international instruments on human rights and make recommendations for their effective implementation to the government. The commission is responsible for spreading of human rights awareness amongst the masses and encouraging the efforts of all stake holders in the field of human rights literacy not only at the national level but at international level too.

Section 2(1) (d) of the NHRC act defines 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 NHRC, India plays an active role in coordinating with other NHRIs of the world to enhance

awareness from the perspective of human rights. It has also hosted delegations from UN bodies and other National Human Rights Commission as well as members of civil society, lawyers. NHRC's role in protecting and promoting human rights

NHRC plays an important role in protecting and promoting human rights in India in the following ways:

- Its inquiries into violation of human rights or abetment of such violation or negligence in the prevention of such violation by a public servant; either *sou motu* or on a petition by a victim or any person on his behalf, or on a direction or order of any court;
- It examines the conditions of prison inmates by visiting under intimation to the state prisons or any other institution of the state, where persons are detained or lodged for purposes of treatment, reformation or protection, and make recommendations in that regard.
- It reviews the constitutional and legal safeguards related to the protection of human rights and recommends measures for their effective implementation including acts of terrorism
- It studies treaties and other international instruments on human rights and makes recommendations for their effective implementation;
- It spreads human rights literacy among various sections of society and promotes awareness of the safeguards available for the protection of these rights through publications, the media, seminars.

VII. JUDICIAL ACTIVISM IN INDIA WITH REGARD TO UPHOLDING HUMAN RIGHTS

Judicial activism in India implies the authority of the Supreme Court and the high courts, but not the subordinate courts, to declare the regulations unconstitutional and void if they breach or if the legislation is incompatible with one or more of the constitutional clauses.

According to SP Sathe, a court giving a new meaning to the provision to suit the changing social or economic conditions or expanding the horizons of the rights of the individual is said to be an activist court.

The Supreme Court of India in its initial years was more a technocratic court but slowly began to become more active through constitutional interpretation. The court became an activist through its involvement and interpretation of law and statutes but the whole transformation took years and it was a gradual process. The origins of Judicial activism can be seen in the court's

premature and early assertion regarding the essence and nature of Judicial Review.

INDIA'S JUDICIAL ACTIVISM CAN BE POSITIVE AS WELL AS NEGATIVE:

A court engaged in altering the power relations to make them more equitable is said to be positively activist and

A court using its ingenuity to maintain the status quo in power relations is said to be negatively activist.

Judicial activism reflects the suggested patterns in the administrative namely: expansion of hearing privileges over administrative lapses, extension of judicial control over discretionary forces, expansion of judicial review over the administration, and extending the conventional translation guidelines in its quest for financial, cultural and academic goals.

COURSE OF JUDICIAL ACTIVISM

After the independence, judicial activism was almost silent for the first decade; the executive and legislative organs of the government actively dominated and intervened in the working of the judiciary. It was in 70s the Apex court started viewing the judicial and structural view of the constitution.

In the landmark *Keshwananda Bharti* case, just two years before the emergency declaration the apex court of India declared that the executive had no right to intercede and tamper the basic structure of the constitution. Though the exigency imposed by the then Prime Minister Indira Gandhi could not be prevented by the Judiciary, the concept of judicial activism started gaining more power from there.

In *I. C. Golaknath & Ors vs State Of Punjab & Anrs.* the Supreme Court declared that Fundamental Rights enshrined in Part 3 are immune and cannot be amended by the legislative assembly.

In *Hussainara Khatoon v. State of Bihar*, the inhuman and barbaric conditions of the undertrial prisoners reflected through the articles published in the newspaper. Many prisoners who were under trial had already served the maximum persecution without being charged for the offense. A writ petition was filed by an advocate under article 21 of the Indian Constitution. The apex court accepted it and held that right to speedy trial is a fundamental right and directed the state authorities to provide free legal facilities to the under-trial inmates so that they could get justice, bail, or final release.

Another important case *Sheela Barse v. State of Maharashtra*, a letter written by a Journalist was addressed to the Supreme Court avouching the custodial violence of women prisoners in

Jail. The court treated that letter as a writ petition and took cognizance of that matter and issued the opposite guidelines to the concerned authorities of the state.

In *Sunil Batra v. Delhi Administration*, the court exercised its epistolary jurisdiction, and a letter written by a prisoner was treated as a petition. The letter supposed that the head warden atrociously inflicted pain and assaulted another prisoner. The Court stated that the technicalities cannot stop the court from protecting the civil liberties of the individuals.

Some instances when the mechanism of Judicial Activism turned to the Judicial overreach. The parliament of India has held responsible or accused the Judiciary for intervening and overreaching its constitutional powers.

In the *Supreme Court Advocates-on-Record Association v. Union of India*, the National Judicial Appointments Commission (NJAC) Act, and the constitutional amendment was declared unconstitutional by the Apex court and the judgment was delivered with the majority of 4:1. The act was declared unconstitutional as it was violating the judicial independence. And the existing collegium system pertaining to transfer and appointment of judges again came in the operation. Justice Khehar said, the absolute independence of judiciary, from other organs of governance, protects the rights of the people.

In *Swaraj Abhiyan v. Union of India & Ors.*, the Apex court instructed the Ministry of Agriculture of the Union of India to update and amend the Drought Management Manual. The apex court also guided the state to constitute a National Disaster Mitigation Fund within three months. On this, the then Finance Minister Arun Jaitley said: We have the National Disaster Response Fund and the State Disaster Response Fund and now we are being asked to create a third fund.

The appropriation bill is being passed. Now outside this Bill, we are being told to create this fund. How will I do that? India's budget-making is being subject to judicial review. Step by step, brick by brick, the edifice of India's legislature is being destroyed. This was the response of the legislature on the overreaching the constitutional powers by the judiciary.

The judiciary sometimes has tried to regulate itself and put some constraints on its powers whenever it is required. The Supreme Court in *Divisional Manager, Aravali Golf Course v. Chander Haas* observed that:

Judges must know their limits and must not try to run the Government. They must have modesty and humility, and not behave like Emperors. There is broad separation of powers under the Constitution and each organ of the State—the legislature, the executive and the judiciary—must have respect for the others and must not encroach into each other's

In *Christian Medical College, Vellore & Others versus Union of India and Others*, The Supreme Court barred the states from conducting separate entrance exams for medical courses and ruled that undergraduate admissions to medical courses can only be done through the NEET.

The rulings of the Supreme Court on the National Eligibility-cum- Entrance Test (NEET), i.e., the single exam for admission to medical colleges, the reformation of the Board of Cricket Council in India (BCCI), the filing of the post of judge, etc were regarded by the government to be the Judicial Intervention.

VIII. LODHA COMMITTEE REPORT ON THE BOARD OF CONTROL FOR CRICKET IN INDIA

The Supreme Court established the Lodha Panel amid accusations of Indian cricket corruption, match-fixing, and betting controversies. In an effort to bring law and order back into the BCCI, the committee was setup.

The committee recommended some points such as BCCI should come under RTI, cricket betting should be made legal, and only the bodies that represent states should have the voting rights while teams such as Railways and Services should be given the status of associate members without any voting rights. But these recommendations were treated as Judicial overreach as BCCI is an independent body not controlled by any state or central govt. so the Lodha committee has no authority to declare such recommendations.

IX. CONCLUSION

Human rights are basic fundamental rights which are integral part for the enlargement of human being in the absence of which person cannot live life with dignity. Constitution of India protects the basic rights or human rights of the people, provisions for the same have been made not only in the Articles of the Constitution but in fact Preamble also talks about the fundamental freedoms and protection of the dignity of the individual.

The Indian judiciary has done a commendable job in raising awareness of the importance of protection of Human Rights and encouraging people to participate in preventing the violation of these rights through public interest litigation. Ordinary people, social services organization and especially lawyers must show a high sense of responsibility when initiating public interest litigation and should not be motivated by personal interests. Through Public Interest Litigation, the court heard various issues for violations of human rights.

Ordinary people, social services organization and especially lawyers must show a high sense of responsibility when initiating public interest litigation and should not be motivated by personal

interests. The judiciary has even relaxed the conventional rules for the safeguard of human rights, which paved the method for the development of "Public Interest Litigation". Through Public Interest Litigation, the court heard various issues for violations of human rights. The judiciary tried to curb the tendency to file rash petitions under the guise of PIL. These situations can be avoided by considering only those public interest cases handled by recognized and well-respected social institutions or legal aid associations.

The protection of human rights is an important matter of anxiety not only in India but also in the entire world. In order to protect human rights, various international instruments have been included, and on the basis of the provisions of international instruments, such as the promulgation of the "Protection of Human Rights Act 1993". The law has provided for the founding of national human rights commissions and state human rights commissions in each state. It also stipulates the configuration of human rights courts at the regional level so that judicial assistance can be provided to the victims of human rights violations at all levels.
