

Human Rights in Indian Constitution

Sushant Saurabh
Asst. Professor
Veearayatan B.Ed. College,
Pawapuri (Nalanda)
sushant.saurabh8@gmail.com

Abstract

All human beings are born free and equal in Dignity and Rights in the world. It allows people to participate in their communities and society in a constructive and respectful way for themselves and others. Human Rights may be regarded as those fundamental rights which are essential for life as human being. Human Rights are the rights which are possessed by every human being irrespective of his or her nationality, race, religion, sex etc. simply because he or she is a human being. Human Rights are those rights which are inherent in our nature and without which we cannot live as human being.

Education shall be directed to the full development of human personality and to the strengthening of respect for human rights and fundamental freedom. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups and further the activities for maintenance of peace.

Human Rights are sometimes called fundamental rights or basic rights or natural rights, As fundamental or basic rights they are rights which cannot, rather must not be taken away by any legislature or any Act of the government and which are often set out in a constitution. This paper tries to focus on provisions for human rights in the Indian Constitution.

Introduction

The constitution of India is one of the most right based constitutions in the world. It was drafted around the same time as the universal declaration of Human Rights (1948) was adopted. The constitution captured the essence of human rights in its preamble, and the section on fundamental rights and directive principles of state policy. The constitution of India is based on the principles that guided India's struggle against the colonial regime that consistently violated the civil, political, social, economic and cultural rights of the people of India. The freedom struggle itself was informed by many movements for social reforms against oppressive social practices like sati, child marriage, untouchability etc. Thus during mid 1920s the Indian National Congress had already adopted most of the civil and political rights in its agenda. The movement led by Dr. B.R. Ambedkar against discrimination, against the Untouchability also had an impact on the Indian constitution.

In spite of the fact that most of the human rights found more clear expression in the constitution of India, the independent Indian state carried forward many colonial tendencies and power structures, including those embedded in the elite Indian Civil Service. Though the Indian state under Jawaharlal Nehru took many proactive steps and followed a welfare state model, the police and bureaucracy remained largely colonial in their approach and sought to exert control and power over citizens. The caste ridden, feudal and communal characteristics of the Indian polity, coupled with a colonial bureaucracy, weighed against the spirit of freedom, rights and affirmative action enshrined in the constitution. Over a period of 30 years, the articulation and assertion of human rights within civil society has grown into a much richer, more diverse and relatively more powerful discourse at multiple levels. Let us discuss about human rights as enshrined in the Constitution of India.

Preamble

The preamble to the constitution of India which outlines the objectives of the constitution states "We that people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure all the citizens; Justice, social economic and political; Liberty of thoughts, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation." The preamble ensures justice, liberty, equality and fraternity in a sovereign, socialist, secular and democratic republic. The ethos enshrined in the preamble is all that can be also be named as human rights.

The constitution of India has provided a detailed list of human rights incorporated in the form of Fundamental Rights (Part III) and the Directive Principles (Part IV).

Fundamental Rights

Right to Equality

Articles 14-18 of the constitution of India deal with the right to equality

1. Equality before law and equal protection of law to all persons within the territory of India- (Article 14)
2. State cannot discriminate on grounds of religion, race, castes, sex or place of birth. It also provides access to public places for all without discrimination- (Article 15)
3. Equality of opportunity in matters of public appointments or public services- (Article 16)
4. Abolition of untouchability- (Article 17)
5. Abolition of titles (other than military and academic)- (Article 18)

These provisions (Article 14-18) clearly established that all citizens have been guaranteed political and social equality. The constitution also protects the citizens against discriminatory treatment and provides them equal opportunity in social and public life.

Right to Freedom

Article 19 to 22 covers the right to freedom.

(i) Six Fundamental Freedoms- (Article 19)

- a. Freedom of speech and expression
- b. Freedom to assemble peacefully and without arms
- c. Freedom to form associations and unions
- d. Freedom to move freely throughout the territory of India
- e. Freedom to reside and settle in any part of India
- f. Freedom to practice any profession or to carry on any occupation, trade or business.

(ii) Protection in respect of conviction for offences (Article 20)

This provides that no person shall be convicted of any offence except for violation of law in force at the time of the commission of the act. Nobody should be

subjected to the penalty or punishment greater than that provided under law at the time of an offence. This also prohibited on double jeopardy any ex-post facto laws.

(iii) Protection of life and personal Liberty (Article 21)

The constitution of India provides that "no person shall be deprived of his life or personal liberty except according to the procedure established by law." The right to life and personal liberty (article 21) is the most fundamental of all fundamental rights and it can never be suspended (along with article 20), not even during emergency.

(iv) Protection against Arrest and Detention in Certain Cases (Article 22)

- a. It lays down that no person who has been arrested shall be detained in custody without being informed, as soon as may be, of the ground for such arrest.
- b. Arrested person shall not be denied the right to consult and to be defended by a legal practitioner of his choice.
- c. Each arrested/detained person has to be produced before the nearest magistrate within twenty-four hours of such arrest and cannot be kept in custody twenty-four hours without the authority of the magistrate.
- d. The constitution, however, provides for arrest in preventive detention for an act of a person committing anti-national activities. In such a case the initial detention may be for two months (or as fixed by the Parliament) and the further detention can only be on the recommendation of an Advisory Board under the chairmanship of a Judge of High Court also having two other high court Judges as members.

Right against Exploitation

- a) Prohibition of traffic in human being, beggar and forced labour- (Article 23)
- b) Prohibition of employment of children below the age of 14 years in factories, mines or other hazardous jobs-(Article 24)

Right to Freedom of Religion

The constitution of India provides freedom of religion under Article 25 to 28 to all persons.

- a) Freedom of conscience and right to profess, practice and propagate any religion (subject to public order, morality and health) – (Article 25)
- b) Freedom to manage religious affairs, to own and acquire moveable and immovable property and to administer such property – (Article 26)
- c) No person shall be compelled to pay any taxes for the promotion or maintenance of any particular religion- (Article 27)
- d) No religious instructions can be provide in an educational institution wholly maintained out of state fund or receiving aid from the state- (Article 28). Similarly,

there is freedom to attend religious instruction or religious worship in certain educational institutions and nobody shall be forced or compelled to attend any religious instructions and functions.

Cultural and Educational Rights

- a) Protection of the interests of minorities and to enable them to conserve their language, script or culture – (Article 29)
- b) Right of minorities to establish and administer educational institutions of their choice – (Article 30)

Right to property

The original constitution provided the right to property as a fundamental right to all citizens – (Article 31). This included the right to acquire, hold and dispose off property. But this right was omitted from the list of Fundamental Rights by the forty-fourth Amendment carried out in 1978. However, right to property is still a constitutional and legal right as the forty-fourth Amendment had added a new Article, Article 300-A in part XII of the Constitution which provided that "No person shall be deprived of this property saved by authority of law."

Right to Constitutional Remedies

Article 32 grants the right to move the Supreme Court by appropriate proceedings for the enforcement of the right conferred by the Constitution. The Supreme Court has been vested with the authority to issue writs, orders or directions. The writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari whichever may be appropriate for the enforcement of rights, can be issued by the Supreme Court. Under Article 226, the people can even move High Courts for the enforcement of Fundamental Rights.

Similarly, the Directive principles of State Policy which has been provided in part IV of the constitution (Article 36 to 51) aims at realizing the high deals of justice, liberty, equality and fraternity as outlined in the preamble to the constitution. The framers of the constitution borrowed this feature from the constitution of the Irish republic.

Conclusion

At last for the protection of Human Rights, it is very essential that people know their rights and become fully conscious of them. All "claims" of the individual cannot be treated as Human Rights. Only those claims which are essential for the development of one's personality and are recognized as such by the "society" constitute rights. But one has to recognize the fact that this idea is not the reality and that what is conceptually recognized as rights is often not legally

enforced or enforceable. So one must distinguish between what is morally and universally accepted as rights and what constitute 'legal rights' established according to the law-creating process and judicially enforceable in a given society.

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