

HUMAN RIGHTS AND FUNDAMENTAL RIGHTS IN INDIAN CONSTITUTION: AN ASSESSMENT**Dr. Chandrakanthi.L**

Assistant Professor

P.G. Department of Law and University Law College

Bangalore University

Bangalore -560056

Abstract:

All constitutional rights are human rights but all human rights are not fundamental rights under Indian Constitution. In the Indian Constitution part III deals with exclusively fundamental rights and part IV deals with Directive Principles of State Policy (Human Rights). Similarly, it is there in International law as International Covenant on Civil and Political Rights (whatever rights considered as fundamental rights in the constitution) and International Covenant on Economic, Social and Cultural Rights (Directive Principles of State Policy). However there is no difference between those above stated two categories of rights, but India fundamental rights are justiciable but rights under Part IV of the Constitution are non-justiciable. Further, Indian Judiciary remark them as complementary each other.

Introduction

Human rights are common to all. As human values are inherent in nature, they are universal and indivisible. They are minimal rights, which ought to accept as basic freedoms of the individual. They are interdependent and inalienable freedoms of the individual. To achieve full development of the human personality in the democracy system these rights need to protect. Otherwise, it creates a serious threat of erosion in the democracy, where actually rule of law is sustained. Hence, they find mention in constitutions and legal systems throughout the world and in the international human rights instruments. Furthermore, in the Indian Constitution, certain human rights are incorporated as fundamental rights and they are enforceable under Part III of the Constitution. There are certain other rights, which are fundamental in the governance of the state but not enforceable. They are the rights under Part IV of the constitution.

Conceptualization of Human Rights

The primitive man had no notion of fundamental rights though he had a number of freedoms, because there were no developed political institutions to give them real effect as they were belonged to certain privileged classes such as rulers, clergy, etc. The enforcement of law was as per the whims and fancies of the privileged classes. These human rights find mention in all languages, literatures and religious scriptures of the different communities of the world. It shows the existence of human rights ever since the origin of the human race. Perhaps the Vedas, Smriti, Bible, Koran, etc. and the theories of natural laws speak on the rights of the individuals.

In Indian legacy, human rights have always placed with paramount importance as India believed in the principle, "Vashudhaiva-kutumbakam."¹Justice Rama Jois words are like this -"According to Ra,adhama, the King was given the power only to enforce the law. Dharmasatras did not confer on or recognise any legislative power in the King. This is the most important distinction between Kingship in India and the concept of Kingship in the West. But under the Kingship as recognised and established under the Dnarmasastras, the laws were those laid down by the Dharmasastras themselves. They did not authorise the King to lay down new laws or amend provisions of the Dharmasastras. On the other hand, Dharmasastras also laid down the laws governing the conduct of the King himself (Rajadhama).²Jawaharlal Nehru says rightly that there is "an unbroken continuity between the most modern and the most ancient phases of Hindu thought extending over- three thousand years."³The first responsibility in ancient Indian policy was in the form of Dharma. Dharma is the law developed by the people to ensure the welfare and happiness of the people as a whole. John D. Man says that "hindu law is the oldest Pedigree of any known system of jurisprudence". The British Cabinet Mission 1946 recognized the need for written guaranteed fundamental rights in the constitution of India.⁴

The writings of Greek and Roman philosophers say that they had given equal freedom of speech, equality before law, right to vote, right to elect to public office right to trade and the right of access to justice to their citizens. In England, kink John's Magna Carta shows that it had ensured feudal rights to the English baron on June 15, 1215 in United States of America, the Virginia Bills of Rights, 1776 and the constitution of the United States of 1787, in European Countries the Declaration of the rights of man of 1789 postulate for the protection of human rights. It shows the people's strive and their faith in human rights. On January 6, 1941 US President, Franklin D. Roosevelt made a proclamation of 'four freedoms' i.e., freedom of speech, freedom of religion, freedom from want and freedom from fear. He said that freedom means the supremacy of human rights everywhere and we support the persons who struggle to gain them and keep them.⁵In a document called "Atlantic charter (which was made on August 1941) A Joint declaration was made by the president Franklin D. Roosevelt and the prime minister Winston Churchill of the United Kingdom, which enshrined the hope for a peace which affords all the men in all the lands freedom from fear and want. On January 1, 1942 the Declaration of the United Nations was signed at Washington, which confirmed the principles of the Atlantic Charter. Further in 1943 other two Declarations were i.e., Moscow Declaration and Tehran Declaration. In 1944, Dumbarton Oaks conference one of the proposals was the promotion of human rights to be performed by the General Assembly through its agency; Economic and Social Council. It shows the efforts made to create international organization when the World War II was in progress. However, the United Nations established an International Organization in 1945. In the United Nations Charter 1946 stated that "we the people of United Nations determined to reaffirm faith in human rights, dignity and in the equal rights of men and women.

Further, in February 1946, the United Nations Economic and Social Council established a commission to prepare report and to give recommendations on international bill on human rights. Because of it, on December 1948, the United Nations made an attempt by drawing up Universal Declaration of Human Rights with a view to implement universal declarations, conventions, etc. Finally, the General Assembly

¹Nizami and Devika Paul, Hu(1994), *Human Rights in the Third World Countries*, New Delhi: Kirs Publications, p.107.

² Rama Jois, (2001), *Legal and constitutional History of India*, Part I, New Delhi: Universal Law Publishing Co. Ltd, p. 13.

³Jawaharlal Nehru. (1992), *The Discovery of India*, New Delhi: Jawaharlal Nehru Memorial Fund, p. 88.

⁴KantaRehman, (2004), *Human Rights: Concepts and Issues*, New Delhi: Commonwealth Publishers, p. 82.

⁵ Agarwal, H.O., (1999) *Human Rights*, Allahabad: Central Law Publications, p.2.

transferred the provisions of the Universal Declaration on Human Rights into the International Conventions viz., International Covenants on Economic, Social and Cultural Rights 1966 In India the framers of the Constitution inspired by the ideals of international peace and had respect for human rights as embodied in the United Nations Charter and the declaration. Hence, in the Constitution of India great respect on human rights and fundamental freedoms ensures to all Indian citizens. The preamble to the Constitution states:

JUSTICE, Social, Economic and Political;

LIBERTY of thought, 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.

However, the present concept of human rights is the result of the experiences of the World War II. During that time heinous and shocking crimes were committed, there was negation of human values and dignity. It was the time to establish international peace and security through the restoration of freedoms and rights of the people. Meanwhile, intellectuals were dissatisfied about the oppression of ruling class system. In the modern understanding of human rights, human beings possess certain very basic and inalienable rights, human beings possess certain very basic inalienable rights, which have certain features. They are:

- They are the rights of individuals or a group of individuals and enforceable for and against the State by them;
- Human beings vested in them by birth and they have permanent, universal and legal effect in all walks of life;
- They are meant to uphold human dignity, equality and to set forth liberty and fraternity to all;
- They are minimum requirements for the survival of human beings in the society. Hence, they are protected and enforced by the authority of society or the state at all levels.

Definition of Human Rights

The term “Human Rights” emerges from the post-world War II International Charters and conventions. The interpretation of human rights may differ in different situations in their documentary usage. It is true that human rights are necessary for human life as moral claims without which no man can claim himself at his best.

The United Nations Centre for human rights defines Human Rights as those rights which are human beings”.

According to Article 1 of the Universal Declaration of Human Rights, “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.

Mahatma Gandhi said that “respect of oneself, equally applies to the whole universe. All mankind in essence are alike, what is therefore possible for one is possible for everybody”.⁶

The Protection of Human Rights Act 1993 states” Human Right means rights relating to life liberty, equality and dignity of the individuals guaranteed by the constitution or embodied in the International Covenants and enforceable by courts in India.”

D.D Basu defined human rights “are those minimum rights which every individual must have against state or other public authority by virtue of being a member of human family, irrespective of any other consideration”.

Justice M.H. Beg, former Chief Justice of India, while defining human rights stated that human rights imply justice, equality and freedom from arbitrary and discriminatory treatment; these cannot be subjected to coercion for holding particular religious beliefs.

Prophet Mohammad said that “all men are brothers and that non-Muslims should be treated with no less dignity and respect for their personality than Muslims. No discrimination against all persons whether black or white or whatsoever.” Thus, human rights are those rights available by virtue of his being a member of human family, irrespective of any other consideration.⁷

CATEGORIES OF HUMAN RIGHTS

Human Rights can be called as positive and negative rights. Certain are positive human rights as the state is required to take steps for their realization such as the right to food, right to work, right to education etc. Certain rights negative human rights as the state should not curtail or encroach the freedom such act such as freedom from torture, freedom from arbitrary arrest etc. While civil and political rights are predominately negative in nature, the majority of social, cultural and economic rights are positive in nature. However, here for the purpose of study Human Rights can be broadly classifying into two major categories. They are called as specified rights as they have been mentioned by their name.

1. Civil and Political Rights
2. Economic and Social Rights

Civil and Political Rights

The Covenant on Civil and Political Rights envisages for the protection and promotion of certain rights, which are called as Civil, and Political Rights. The rights cherished in the Covenant on Civil and Political Rights have been protected under Part III of the Indian Constitution as Fundamental Rights. These rights include right equality⁸right to freedom,⁹right against exploitation¹⁰, right freedom of religion¹¹, cultural and educational rights¹², and right to Constitutional remedies¹³. There are certain other rights, which

⁶ Ibid., p.3

⁷ Basu, D.D., (2008), *Human Rights in Constitutional Law*, Nagpur: Lexis Nexis, Butterworths Wadhwa, p.5.

⁸ Article 14-18 of Indian Constitution.

⁹ Article 19-22 of Indian Constitution.

¹⁰ Article 23-24 of Indian Constitution

¹¹ Article 25-28 of Indian Constitution

¹² Article 29-30 of Indian Constitution

¹³ Article 32-35 of Indian Constitution

been protected by the International Covenant on Civil and Political Rights which are not specified in the Part III of the Constitution as Fundamental Rights. However, they have been regarded as Fundamental Rights by the Supreme Court by enlarging the meaning and scope of the named Fundamental Rights. For example, Article 21 of the Constitution, guarantees life and personal liberty but it has been interpreted to include right to go abroad, right to privacy, right against solitary confinement and inhuman treatment in prison, right to free legal aid, right to speedy trial, right against hand cuffing, right to against custodial violence, right against public hanging, right to shelter, right to live with human dignity, right to livelihood, right to enjoy pollution free water and air, etc.

In *Maneka Gandhi v. Union of India*¹⁴ case Bhagavati J. has said that the expression 'personal liberty' in Art. 21 is of the widest amplitude and it covers a variety of rights which go to constitute personal liberty of man and they have raised to the status of distinct fundamental rights. In *Unni Krishnan J.P v. State of Andhra Pradesh*,¹⁵ the Supreme Court held that 'personal liberty takes all the rights of man'. Hence it has the widest ambit and scope and is co-extensive of Article 21 which includes both substantive right to personal liberty and procedural safeguard to be observed for its deprivation. Again, the Supreme Court in *S. R. Bommai v. Union of India*¹⁶ case held that the preamble of the constitution is an integral part of the Constitution. Hence, 'personal liberty' guaranteed under Article 21 must be interpreted in the light of the personal liberty and dignity promised in the preamble. The Convention and the Constitution stand on equal footing for the protection and promotion of these basic and fundamental rights.

In *KeshavanandaBharathi v. State of Kerala*¹⁷ Chief Justice S.M. Sikri stated that India being a member to the Universal Declaration of Human Rights, is unable to say that certain rights are not natural or inalienable rights as certain fundamental rights are described in the Universal Declaration of Human Rights as such. Again in *Central Inland Water Transport Corporation Ltd. V. BrojoNathGanguly*,¹⁸ Supreme Court had reiterated the influence of the human rights of Universal Declaration of Human Rights while including the fundamental rights to the Part III of our Constitution. In *S.P. Mittal v. Union of India*¹⁹ Chinnappa Reddy, J. says, "everyone has a religion, or at least, a view or a window on religion, irrespective of the fact that he is a bigot or simple believer, philosopher or pedestrian atheist or agnostic". On the other hand, right to life includes the right enjoy each and every material facility which shall sustain and improve man's bodily existence and man's moral and spiritual advancement by the right to freedom of conscience and religion.

¹⁴ AIR 1978 SC 597

¹⁵(1993) 1 SCC 645

¹⁶ AIR 1994 SC 1918 para 183

¹⁷ AIR 1973 SC1461

¹⁸ AIR 1986 SC 1571

¹⁹ AIR 1983 SC 1

Human Rights (Fundamental Rights- political and civil rights) in Indian Constitution and International Covenant on Political and Civil Rights

Human Rights	Indian Constitution	International Covenant on Political and Civil Rights
No Forced Labour	Art.23	Art.8
Right to equality	Art.14	Art.14
Equal Protection	Art. 15	Art.26
Right to equal opportunity	Art. 16(1)	Art. 25(c)
Freedom of speech and expression	Art. 19 (1) (a)	Art. 19 (1) and (2)
Right to peaceful assembly	Art. 19 (1) (b)	Art. 21
Freedom of Association	Art. 19 (1) (c)	Art. 22 (1)
Right to reside and settle	Art. 19 (1) (d) and (e)	Art. 12 (1)
Punishment only for violation law	Art. 20 (1)	Art. 15 (1)
Protection against Double Jeopardy	Art. 20 (2)	Art. 14 (7)
No compulsion to be a witness himself/ confess guilt	Art. 20 (3)	Art. 14 (3) (g)
Right to life and personal liberty	Art. 21	Art. 16 (1) and 9 (1)
Due process of law to deprive one's life and liberty	Art. 22	Art. 9 (2) (3) and (4)
Religious rights	Art. 18 (1)	Art. 25

ECONOMIC AND SOCIAL RIGHTS

In India, much importance has been given to civil and political rights but not to economic and social rights. However, in real sense the realization of the civil and political rights is impossible without the enjoyment of economic and social rights. P.N. Bagawati, J rightly said that the civil and political rights become a practical reality for the people of the State only on the achievement social and economic rights. The Economic and Social rights are the medium to achieve civil and political rights. Otherwise, the civil and political rights will remain merely a leasing illusion and a promise. The rights postulated under the International Covenant on Economic, and Social Rights are incorporated in the Directive Principles of State Policy under Part IV of the Constitution of India. Though Part IV contain directives of the State, it is intended to guarantee certain basic economic and social rights to the citizens by the State.²⁰

These are non-justiciable rights. The International Covenant on Economic and Social Rights is different with the International Covenant on Civil and Political rights in its regard and effect. Unlike, the former rights do not bind the State and ensure to all individuals the rights the latter. However, the former is very important to enforce effectively the civil, political rights and fundamental rights enshrined in Part III of the Constitution. There is nexus between the Directive Principles of the State Policy and the International Covenant on Economic, Social and Cultural Rights. The Rights guaranteed under the covenant and the directive under the Part IV of the Constitution could be discuss as follows:

In *Randhi Singh v. Union of India*²¹ the Supreme Court held that the principle of “equal pay for equal work” though not a fundamental right is certainly a constitutional goal and therefore capable of enforcement through constitutional remedies under Article 32 of the Constitution. In *Unnikrishnan v. State of Andhra Pradesh*,²² Supreme Court held that the “right to purview of Article 21 of the Constitution. Now, through 86th amendment to the Indian Constitution, in the year Of 2002 right to education has become fundamental right directly under Article 21A. Indian courts say that treaties shall not be binding upon courts unless they are implemented by legislation.²³ Perhaps under Article 253 of Indian Constitution, the parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. However, in *Vishaka v. State of Rajasthan*²⁴ Chief Justice Verma stated that before we refer to the International conventions and norms having relevance in this field and the manner in which they assume significance in application, we have to use the provisions of the Constitution.

Article 52 of the Indian Constitution which says that the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one other, the provision of Article 253 and entry 14 of the Union List in Seventh Schedule of Indian Constitution which speaks about entering into treaties and agreements and conventions. The learned Judge further stated that if any international convention is not consistent with the fundamental rights its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitution. Further the doctrine of Sovereign immunity states that special reservation can be enjoyed

²⁰In the Inaugural Address at the Seminar on Human Rights organized by the Allahabad Centre of International Law Association on December 6, 1980.

²¹ AIR 1982 SC 879

²² Supra 15

²³ Basu, D.D.,(2007), *Commentary on the Constitution of India*, Vol.II, Nagpur: Lexis Nexis, Butterworths Wadhwa, p.404.

²⁴ (1997) 6 SCC 241

by the State party to the International Community. But sovereignty should not be a defence while guaranteeing and enforcing fundamental right. Hence Supreme Court held in *NilbatiBehra v. State of Orissa*²⁵ that the claim for compensation for the violation of fundamental rights is an acknowledged remedy for enforcement and protection of such rights.

Human Rights (DPSP- economic, social and cultural rights) in Indian Constitution and International Covenant on Economic, Social and Cultural Rights

Human Rights	Indian Constitution	International Covenant on Economic, Social and Cultural Rights
Equal pay for equal work	Art. 39 (d)	Art. 7 (a)(i)
Safe and healthy working condition	Art. 42	Art. 7(b)
Maternity benefit	Art. 42	Art. 10 (2)
Safe guards the people with respect to their all capacity...i.e., education, health, work, employment etc.	Art. 41	Art. 6 (1)
Special provisions for the protection of children and youth	Art. 39 (f)	Art. 10 (3)
Compulsory and free Education	Art. 45 (now fundamental right under Article 21A)	Art. 13 (2) (a)
Secure workers living along with their family	Art. 43	Art. 9(a)(ii)
Reasonable restriction on working hours/periodic holidays	Art. 43	Art. 7 (d)
Right to health	Art. 47	Art. 11

²⁵ AIR 1993 SC 1960

Fundamental Rights and Directive Principles of State Policy

About the importance of the fundamental rights and DPSP, the Supreme Court for the first time court said, "The directive principles have to conform to and run subsidiary to the chapter on fundamental rights."²⁶ Later, the Supreme Court started to realize the importance of the human rights (DPSP) and in its Fundamental Rights Cases opined, what is fundamental in the governance of the state cannot be less significant than what is significant in the life of the individual. Furthermore, "In building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to directive principles."²⁷ In continuation, "neither part being superior to the other," has held the field since.²⁸ It means both are complementary each other.

In the *KeshavanandaBharati v. State of Kerala* case, it is quoted that "Fundamental rights have themselves no fixed content; most of them are empty vessels into which each generation must pour its content in the light of its experience. Restrictions, abridgement, curtailment and even abrogation of these rights in circumstances not visualised by the constitution makers might become necessary; their claim to supremacy or priority is liable to be overborne at particular stages in the history of the nation by the moral claims embodied in Part IV".²⁹ Hence, the DPSP seems more like an aid to interpret the Constitution and to provide the basis, scope and extent of the content of a fundamental right.

Concluding remarks

Article 4 of the International Covenant on Political and Civil Rights says that in the time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the State Parties may take measures derogating from their obligation under the Covenant. It is available only against certain rights not for all. In the sense certain rights cannot be suspended such as right to life, right against torture cruel, inhuman degrading treatment, medical or scientific experimentation without the consent of the subject, slavery slave trade, servitude, imprisonment on the ground of inability to fulfil, a contracted obligation, freedom of thought, conscience and religion, etc.

Nevertheless, suspension of fundamental rights must be in proposition to the situation, or should not be inconsistent with other obligations under International law, or those measures should not involve discrimination on the ground of race, colour, sex, language, religion or social origin. The State party should inform such derogation with reasons when it is activated and when it is terminated. The Constitution after 44th amendment made in 1978 states that fundamental rights may be suspended only in case of proclamation of emergency on the ground of war or external aggression, but not in case of 'armed rebellion'.³⁰ Further going in line with the covenant it states that the enforcement of the right of life and personal liberty should be suspended during emergency.

Human Rights are categories as justiciable and non-justiciable rights. The rights which are justiciable are fundamental human rights and the rights are not justiciable are human rights but not fundamental in nature. i.e. Economic, social and cultural rights are also important equivalent fundamental rights in the constitution and to enforce them they have to appear as providing the content of a fundamental

²⁶*State of Madras v. ChampakamDorairajan* (1951) SCR 525.

²⁷*KeshavanandaBharthi case*, SCC para. 1707, p. 879.

²⁸*State of Kerala v. N. M.. Thomas* (1976) 2 SCC 310 at para. 134, p. 367.

²⁹(1973) 4 SCC para. 1714, p. 881.

³⁰ The term has been replaced in the place of internal aggression.

right³¹but not just by themselves³²However, the Indian Constitution provide scope for wider interpretation by the judiciary to implement the non-justiciable human rights. The Court widened the definition of Article 21 to include to healthy environment³³. It suggests that certain rights are directly available for the rest struggle is must. At International, level no such difference.

³¹Article 39(d)equal pay for equal work , see *Randhir Singh v. Union of India (1982) 1 SCC 618*.

³²*Krishna Bhat v. Union of India (1990) 3 SCC 65*

³³*M. C. Mehta v. Union of India (1998) 9 SCC 591 para. 6.*