



“Survey on Human Rights in Indian Constitution”

Apurva N. Jadhav¹, Gitanjali U. Jadhav², Sakshi V. Kadam³, Archana S. Suryawanshi⁴,

Harshal S. Bhore⁵

Student, Electronics and telecommunication Engineering, AITRC, Vita, India¹

Student, Electronics and telecommunication Engineering, AITRC, Vita, India²

Student, Electronics and telecommunication Engineering, AITRC, Vita, India³

Student, Electronics and telecommunication Engineering, AITRC, Vita, India⁴

Assistant Professor, Mechanical Engineering, AITRC, Vita, India⁵

Abstract: Human Rights are the basic rights which form the essential part of his/her development as human being. Constitution acts as a protector of those basic rights as Fundamental Rights more emphasis has been given to the Fundamental rights and they are directly enforceable in the court of law. Natural Rights were the appropriate starting point for the development of the notion of “Human Rights.” Natural rights were the first expression of human rights in law and morality. Human rights are the rights relating to overall development of every individual. Every Citizen as well as non-citizen carries their rights wherever they go. In the constitution of India various provisions are there that reflects the basic rights which are also known as fundamental rights. But the thing is that there are some specified as well as some unspecified fundamental rights. But the most important thing is that in India there is Protection of Human Rights Act, 1993 with an objective of protecting human beings from violations of Human rights to prevent and punish any gross violation on human rights.

Keywords: Human Rights, Indian, Constitution, Law, Natural, Freedom, Country

I. INTRODUCTION

A human being is born with certain natural rights. Those rights that are basic to humanity are termed as ‘Human Rights’. Broadly speaking, they may include right to life, liberty, prosperity and security of an individual. From time immemorial, social scientists have argued in favor of giving these rights to human beings. Like all other values, freedom is essentially an individual value. There are six fundamental rights in India, They are Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, cultural and Educational Rights, and Right to Constitutional Remedies.

1. Right to Equality



Right to Equality ensures equal rights for all the citizens. The Right to Equality prohibits inequality on the basis of caste, religion, place of birth, race, or gender. It also ensures equality of opportunity in matters of public employment and prevents the State from discriminating against anyone in matters of employment on the grounds only of religion, race, caste, sex, descent, place of birth, place of residence or any of them.

2. Right to Freedom





Right to freedom provides us with various rights. These rights are freedom of speech, freedom of expression, freedom of assembly without arms, freedom of movement throughout the territory of our country, freedom of association, freedom to practice any profession, freedom to reside in any part of the country. However, these rights have their own restrictions.

3. Right against Exploitation



Right against Exploitation condemns human trafficking, child labor, forced labor making it an offense punishable by law, and also prohibit any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it. Unless it is for the public purpose, like community services or NGO work.

4. Right to Freedom of Religion



Right to Freedom of Religion guarantees religious freedom and ensures secular states in India. The Constitutions says that the States should treat all religions equally and impartially and that no state has an official religion. It also guarantees all people the freedom of conscience and the right to preach, practice and propagate any religion of their choice. Article 25 guarantees the freedom of conscience, the freedom to profess, practice, and propagate religion to all citizens.

5. Cultural and Educational Rights



Cultural and Educational Rights protects the rights of cultural, religious and linguistic minorities by enabling them to conserve their heritage and protecting them against discrimination. Educational rights ensure education for everyone irrespective of their caste, gender, religion, etc. Article 30 is also called the “Charter of Education Rights”. Article 30(1): All religious and linguistic minorities have the right to establish and administer educational institutions of their choice.

6. Right to Constitutional Remedies



Right to Constitutional Remedies ensures citizens to go to the supreme court of India to ask for enforcement or protection against violation of their fundamental rights. The Supreme Court has the jurisdiction to enforce the Fundamental Rights even against private bodies, and in case of any violation, award compensation as well to the affected individual. This act comes under article 32 for supreme court.

II. RELATION BETWEEN HUMAN RIGHTS IN CONSTITUTION OF INDIA

The history of human rights can be traced thousand years ago from the various legal, cultural, religious and society development the world have gone through. There is proof of human rights evolving in various regimes. For example, during the time of Prophet Mohammed, he formulated Constitution of Medina in 622, and Magna Carta, 1215 which helped in the formation of various constitutional rights in UK, USA and France. This is the origin of human rights. But these rights did not receive much importance and were violated multiple times because countries and rulers were more into conquering places and establishing their power. Such acts of the existing countries resulted in the World Wars. The International organisations such as League of Nations in 1919 helped in ending WWI but it failed to stop WWII. United Nations Organisations (UNO) established in 1945 helped in bringing peace which eventually led to an end of WWII. Later, UNO worked for the worldwide development of rights which was known as Human rights. As a result, UNO formulated Universal Declaration of Human Rights (UDHR) in 1948 which is based on certain documents and they are Magna Carta (1689), English Bill of Rights, the American Declaration of Independence, the American Bill of Rights, and the French Declaration of the Rights of Man and of the Citizen. UDHR was not legally binding on the States. As a result, they formed two covenants which is legally binding on the States and the covenants are as follows.

- Covenant on Civil and Political Rights, 1976
- Covenant on Economic, Social and Cultural Rights, 1976

III. HUMAN RIGHTS UNDER THE INDIAN CONSTITUTION

Our country was one of the original signatories to the International Covenant on Civil and Political Rights and therefore the framers of Indian Constitution were influenced by the concept of human right and recognised as well as guaranteed most of the human rights which were subsequently embodied in the International Covenant 1966. The Preamble of the Indian Constitution reflects the inspiring ideals with the specific mention of "dignity of the individual". On January 26, 1947, India's new constitution went into effect. On the Constitution's section III, the Universal Declaration of Human Rights clearly had an effect. The Central Assembly of the United Nations enacted the International Covenants on Economic, Social, and Cultural Rights and Civil and Political Rights after India ratified the Universal Declaration of Human Rights in 1948. Those rights contained in the Constitution's Part III are derived from the natural rights philosophy. The term "Fundamental Rights" is a contemporary synonym for the term "Natural Rights."

The Constitution of India was adopted on November 26, 1949. According to Article 394 of the Constitution, the whole of the Constitution, except Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 380, 388, 392 and 393 (which came into force at once), came into force on January 26, 1950, which is referred to as the day of the commencement of the Constitution. It is significant to note that the term "human rights" finds mention in the Charter of the United Nations. The Preamble of the U. N. Charter reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women."

Six Fundamental rights recognize by the Indian constitution:

- Articles 14-18: Right to equality,
- Articles 19-22: Right to freedom,
- Articles 23-24: Right against exploitation,
- Articles 25-28: Right to freedom of religion,



Articles 29-30: Cultural and educational rights and
Article 32 and 226: Right to constitutional remedies.

Directive Principles enshrined in Part IV of the Constitution epitomise the ideals, aspirations the sentiments, the precepts and the goals of our entire freedom movement. The wisdom of the forefathers of the Constitution was justified in incorporating non-justiciable human rights in the concrete shape of the directive principles. RIGHT TO LIFE AND PERSONAL LIBERTY Art. 21 of our Constitution guarantees right to life and personal liberty. The Article runs as follows:- "No person shall be deprived of his life or personal liberty except according to procedure established by law." The first draft to the Constituent Assembly of this Article appeared in the following shape: "No person shall be deprived of his life or personal liberty without due process of law, nor shall any person be denied equality before law within the territories of the federation." The Drafting Committee headed by Dr. B. R. Ambedkar, however, substituted the words "except according to procedure established by law" since the former is more specific. In the case of an emergency, basic rights may be postponed or even prohibited from being enforced. The objectives, aspirations, feelings, precepts, and aims of our whole liberation movement are embodied in the Directive Principles of Part IV of the Constitution. Non-justiciable human rights have been included into the concrete form of the guiding principles by the Constitution's founding authors.

Right to clean environment as a right to life :

Art 21 was applied in the Doon Valley Case (AIR 1985 SC 652) to stop the Mussoorie Hills from being degraded by mining. Article 21 included a right to clean air and water, as well as the preservation of humanity's natural resources, the Supreme Court said. A pollution treatment facility is a pre-condition for the establishment and continuing of an enterprise in M. C. Mehta vs. Union of India (AIR 1988 SC 1037), the Supreme Court said. "A tannery that cannot set up a primary treatment plant, just like an industry that cannot pay its workers minimum wages, cannot be allowed to exist," the report said. "Oleum Gas Leak Case (AIR 1986 SC) enforced strict responsibility without exemption to a polluting activity utilising hazardous manufacturing processes. Under Article 21 of the 8022 | Vikas Sharma Human Rights In Constitution Of India Constitution, this was another writ. "An company engaged in hazardous or intrinsically dangerous industrial activity that poses a possible threat to the health and safety of individuals working in the factory and live in the surrounding area was required to provide compensation for the injuries caused," observed Bhagwati C.J. in this case." In the case of Rylands versus Fletcher, the English courts recognised that the idea of unlimited responsibility included certain restrictions and exceptions, which are worth mentioning for the benefit of the public. "Our hands are tied in India, therefore I'm going to propose a novel concept of liability that hasn't been tried before in English courts. There is no reason why we should hesitate to develop new principles of liability to deal with an unusual situation that has arisen and is likely to arise in the future because of hazardous or intrinsically dangerous industries that are part of an industrial economy."

Enumeration of political and civil fundamental rights under the constitution of India:

The political and civil rights are termed as 'Fundamental Rights' and enshrined in Part-III of the Indian Constitution which includes the following rights:— (1) Right to equality - Articles 14, 15 and 16. (2) Right to six freedoms - Article 19. (a) Freedom of speech and expression. (b) Freedom to assemble peacefully and without arms. (c) Freedom to form associations or unions. (d) Freedom to move freely throughout the Territory of India. (e) Freedom to reside and settle in any part of the territory of India. (f) Freedom to practice any profession or carry on any occupation, trade or business. (3) Right to life and personal liberty - Articles 20, 21 and 22. (4) Right to freedom of religion - Articles 25, 26, 27 and 28. (5) Cultural and educational rights - Articles 29 and 30. (6) Right to property - Article 31. (The 44th amendment has deleted this right and re-enacted it in Article 300 A, as constitutional right). (7) Right against exploitation - Articles 23 and 24. (8) Right to Constitutional remedies - Article 32.

Economic, social and cultural rights — and civil and political rights:

All human rights, whether civil and political—or economic, social and cultural—are interlinked. For example, individuals who cannot read or write often have a harder time in realizing their full potentials than those who can to find work or to take part in political activity. Malnutrition and hunger are less likely to occur where individuals can effectively exercise their right to vote and influence Government priorities. The UDHR, ratified in 1948, makes no distinction between these rights. A distinction later appeared in the context of cold war tensions between the East and West. This led to the negotiation and adoption of two separate covenants—one on civil and political rights, and another on economic, social and cultural rights. In recent decades since the Vienna Declaration on Human Rights in 1993, there has been a return to the original architecture of the UDHR, reaffirming the indivisibility of all human rights. At the same time, there has been renewed attention to the importance of economic, social and cultural rights, particularly in the context of the 2030 Agenda for Sustainable Development and addressing and preventing conflicts crisis worldwide, including the COVID-19 pandemic.

Unenumerated individual rights or 'Natural Rights' under written constitution:

In India, the Supreme Court has propounded the theory of 'emanation' has departed from the traditional view that Part III of the Constitution provides an exhaustive list of Fundamental Rights. The theory, basically means that even though right is not specifically mentioned in Part III, it may still be regarded as a fundamental right if it can be regarded as an integral part of a



named fundamental right; in other words, "it 'emanates' from a named fundamental right or its existence is 'necessary' in order to make the exercise of a named fundamental right meaningful and effective". (Maneka vs. Union of India, A.I.R. 1978 S.C. 597, Para 77). Applying the 'emanation' theory, the Supreme Court has evolved the following unenumerated rights as, Fundamental Rights: (1) The right to privacy (as an emanation from Arts 19(1)(d) and 21). (2) The right to human dignity (as an emanation from Arts. 14, 19, 21). (3) The right to travel abroad (as an emanation from Art. 21) (4) The right against torture, cruel or unusual punishment or degrading treatment, (as an emanation from Art. 21); such as solitary confinement. (5) The right to speedy trial (emanating from Art. 21). (6) The right to free legal aid in criminal trial (from Art. 21). (7) The right against delayed execution. (8) The right against custodian violence. (9) The rights to shelter, to doctor's assistance, the right to health. (10) The right to pollution free environment. (11) The right to education of a child until he attains the age of 14. (12) The freedom of Press, and right to listen, and right to know. (From Art. 19(1) (a)).

IV. CONCLUSION

Fundamental Rights enshrined in the Indian Constitution are like a guarantee which means as long as they exist in the Indian Constitution, democracy will prevail and all Indian citizens can be assured of the protection of their basic rights. Such civil liberties prevail over any other law of the land. The Human rights as a construction that allows us to recognize the practical importance of law, reason and social fact in bringing economic and social rights into reality.

It is the interchangeability of constitutional and human rights, in light of their normative emphasis on individual freedom and dignity, and their shared conceptual treatment of the state. It also suggests that extensive links between international human rights and constitutional rights are established through trans judicial dialogue, borrowing, common structures of reasoning and interpretation, and transnational movements. With the attainment of independence, a declaration of rights, the most elaborate in the world was incorporated in the Constitution.

REFERENCES

- [1] <https://lawbhoomi.com/human-rights-norms-reflected-in-fundamental-rights-of-the-constitution/>
- [2] <https://www.toppr.com/guides/civics/the-indian-constitution/rights-and-fundamental-rights/#:~:text=There%20are%20six%20fundamental%20rights,and%20Right%20to%20Constitutional%20Remedies.>
- [3] <https://thelawbrigade.com/wp-content/uploads/2022/02/Dr-Baloy-Bhattacharjee-JLSR.pdf>
- [4] <https://www.ilkogretim-online.org/fulltext/218-1652515007.pdf>
- [5] <http://mls.org.in/books/H-2537%20Human%20Rights%20in.pdf>
- [6] <https://www.ohchr.org/en/human-rights/economic-social-cultural-rights>
- [7] http://ijrar.com/upload_issue/ijrar_issue_1270.pdf
- [8] <https://www.irjet.net/archives/V6/i1/IRJET-V6I1327.pdf>
- [9] Google