

INDIAN CONSTITUTION AND HUMAN RIGHTS

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ABSTRACT: Right to life and personal liberty is the most cherished and pivotal fundamental human rights around which other rights of the individual revolve and, therefore, the study assumes great significance. The aim of the paper is insight on the constitution of India is based on the principles of liberty, equality, fraternity and justice. For achieving aim we have undertaken a concise study of all the journals and books which are linked with the provisions of the constitution manifest great respect for human dignity, commitment to equality and non-discrimination and concern for the weaker section in society. Further, the constitution makes it mandatory for the Government to protect and promote freedoms, and to assure every citizen a decent standard of living. In other words, the Indian Constitution guarantees the basic human rights to every citizen of India. This paper dealt with general Constitutional Laws of India and the amendments made into Constitution of India. No doubt these rights have been incorporated in Indian Constitution. However, it is still a failure with events of Human Rights violation making headline in one form or the other. The violation of Human Rights may be in deferent from. We should be ashamed with rising issue of Honour Killing, Corporal Punishment, Custodial Death, Fake Encounter Killing, etc. If we want to give the exact interpretation of term Unity in Diversity it is the responsibility of every Indian to irrespective of Race, Colour, Sex, Caste, Language, Religion, Political or other opinion, National or Social origin Property, Birth or other status. To erase Human Rights violation may be impossible but it always possible to bring charges if we take individual responsibility on our own shoulder. So that the Human Rights are Natural Rights and its fully embodied and adopted in our Constitution.

KEYWORDS:- Indian Constitution and Human Rights

INTRODUCTION:-

The Human Rights of every individual. This commitment stems from the United All human beings are born with equal and inalienable rights and fundamental freedoms. On 10th December, 1948, the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights.

The United Nations is committed to upholding, promoting and protecting Nations Charter, which reaffirms the faith of the people of the World in

Fundamental Human Rights and in the dignity and worth of the human person.

The Constitution of India was drafted by the Constituent Assembly on 9th December, 1946, and after long discussion and debates by the thinkers of our country the draft Constitution was finally adopted on 26th November, 1949. The Constitution of India is the largest written Constitution of any Sovereign Country in the World. It sets out Fundamental Rights, Directive Principles of States Policy and the Fundamental Duties of Citizens. It declares India to be a Sovereign, Socialistic, Secular, Democratic, Republic, assuring to Citizen of Justice, Equality and Liberty, endeavors to promote Fraternity among them.

The framers of the Indian Constitution were influenced by the concept of Human Rights and guaranteed most of Human Rights contained in the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights contains Civil and Political as well as Economic, social and Cultural rights, while Civil and Political rights has been incorporated in Part III of the Indian Constitution, that is the Fundamental Rights under Article 12 to 35, and as Economic, Social and Cultural Rights have been incorporated in Part IV of the Constitution, that is the Directive Principles of State Policy under Article 36 to 51, and Part IV –A of the Indian Constitution fundamental Duties mention under Article 51-A. The inclusion of important provisions of Universal Declaration of Human Rights in the Constitution of India has given them supremacy over all other Statutory provisions. A number of International, National and Regional bodies exercise responsibilities for overseeing the monitoring of Human Rights and ensuring that States comply obligations.

Human Rights under Universal Declaration Charter:

In Universal Declaration of Human Rights, there are certain rights which are contained in Charter of Universal Declaration of Human Rights, but have not been mention in the Constitution. These are as:

1. Article 5- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

2. Article 6- Everyone has the right to recognition everywhere as a person before the Law.
3. Article 10- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any Criminal Charge against.
4. Article 11(1)- Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to Law in a public trial at which he has had all guarantees necessary for his defense.
5. Article 12- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, or to attacks upon his honor and reputation. Everyone has the right to the protection of the Law against such interference or attacks.
6. Article 13(3)- Everyone has the right to leave any country, including his own and to return to his country.
7. Article 15(1)- Everyone has the right to a nationality.
8. Article 16(1)- Man and woman of full age, without any limitation due to race, nationality or religion, have the rights to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
9. Article 21(1)- Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Human Rights under Part III of the Indian Constitution:

All Human Rights covered under Part III of the Constitution. Article 21 of the Indian Constitution is of widest implemented and several unremunerated rights fall within it. These are as follows:

- 1) Right to live with Human Dignity,
- 2) Right to privacy,
- 3) Right against Solitary Confinement,
- 4) Right against Bar Fetters,
- 5) Right to Legal Aid,
- 6) Right to Speedy Trial,
- 7) Right against Hand Cuffing,
- 8) Right against Delayed Execution,
- 9) Right against Custodial Violence,
- 10) Right against Public Hearing,
- 11) Right to Health Care or Medical Assistance,
- 12) Right to Shelter,
- 13) Right to live in clean and Pollution free Environment,
- 14) Protection of Children and women,
- 15) Right against Inhuman Treatment,
- 16) Compensation for Violation of Article 21,
- 17) Right to Education,
- 18) Protection against illegal Arrest, Detention and Custodial Death.
- 19) Right against Solitary Confinement,
- 20) Right to go abroad
- 21) Right to Know,
- 22) Right to Release,
- 23) Right Rehabilitation of Bonded Labour,
- 24) Right against Cruel,
- 25) Right against Unusual Punishment, and
- 26) Right of Inmates of Protective Homes.

Above all Rights are covered under Article 21 of the Constitution of India, in so many cases Supreme Court held and decided the rights of person and ward Right to life define widest sense. In *Maneka Gandhi v. Union of India* Court has held that widened the scope of the word 'Personal Liberty' considerably. Justice Bhagwati observed: "The expression 'in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised to the statute of distinct fundamental rights and given additional protection under Article 19 ."

Human Rights and Part IV of the Constitution of India:

The provisions in Part IV of the Constitution of the India, that is Directive Principles of State Policy are also covered the Human Rights, The 42nd Amendment Act, 1976 had inserted Article 48A in Part IV of the Constitution requiring the State to endeavor to protect and improve the Environment and to safeguard the Forest and Wild Life of the Country. The Supreme Court interpreted the Right to Life in Article 21 to mean Life Free from Environmental Pollution. Economic, Social, and Cultural Rights; The Economic, Social and Cultural rights proclaimed in Universal Declaration of Human Rights have been incorporated in Part IV of the Indian Constitution. However, the Constitution of India is conspicuous by absence of express mention of certain rights proclaimed in the Universal Declaration of Human Rights such as rights as to special care and assistance to mothers and children, whether born in or out of wedlock. Parents' right to choose the kind of education for their children. Right of everybody to freely participate in the Cultural life of the community to enjoy Art and to share in Scientific advancement and to its benefits and right to everyone to protection of the Moral and material interests resulting from any Scientific, Literary or Artistic production of which he is author.

In respect of the above rights absence of express mention does not mean that these have not been incorporated in the Indian Constitution. As a matter of fact, the above rights either subsumed in the existing right to any part thereof or have been expressed in a little

different scope. For example Article 39(1) charges the State to direct its policy towards securing, “that children are given opportunities and facility to develop in a healthy manner and in condition of freedom and that childhood and youth are protected against moral and material abandonment.” Similarly, Article 42 makes “provision for just and humane condition of work and maternity relief.” Article 47 provides for the “duty of the State to raise the level of standard of living and to improve public. So far as Human Right concerning Economic, Social and Cultural aspects are concerned, the fact remain that Directive Principles of State Policy contained in Part IVth of the Constitution are definitely

Policy contained in Part IV of the Constitution are definitely much more than the Universal Declaration of Human Rights. Such Rights and Principles are as:

1. Article 39A- Equal Justice and free Legal Aid.
2. Article 40- Organization of Village Panchayat.
3. Article 43A- Participation of workers in Management Industries.
4. Article 44- Uniform Civil Code.
5. Article 46- Promotion of Education and Economic interests of Scheduled Castes, Scheduled Tribes and Other Weaker Sections.
6. Article 48A Protection and improvement and safeguarding of Forests, etc.

Judicial Approach towards Human Rights:

In any organized society, the right to life as a human being is not ensured by meeting only the, animal needs of man. It is secured only when he is assured of all facilities to benefits himself. In Chameli Singh vs. State of U. P.1 case Supreme Court held that, Right to live guaranteed in any civilized society implies the right to Food, Water, Decent Environment, Education, Medical Care and Shelter. These are basic human rights known to any civilize society. All Civil, Political, Social and Cultural rights ensured in Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without the basic Human Rights. Shelter for human being, therefore, is not a mere protection of his life and limits. It is home where had opportunities to grow Physically, Mentally, Intellectually and Spiritually, It includes adequate living Peace, Safe and Decent Structure, Clean and Decent Surrounding, sufficient Light, Pure Air and Water, Electricity, Sanitation and other Civic amenities like Roads etc. So as to have easy access to his daily avocation. The right to shelter, therefore, does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable them to live and develop as a human being.

In view of the importance of the right to shelter, the mandate of the Constitution, and the obligation under the Universal Declaration of Human Rights, the Court held that it is the duty of the State to provide housing facilities of Dalits and Tribes, to enable them to come into the main stream of National Life, under the Constitution of the India Right to Health and Medical Assistance also covered in the Article 21.

Parmananda Katara vs. Union of India² case Court has been held that it is the professional obligation of all Doctors, whether Government or Private, to extend Medical Aid to the enjured immediately to preserve life without waiting legal formalities to be complied with the Police under Criminal Procedure Code. Article 21of the Constitution Casts the obligation on the State to preserve life. It is the obligation of those who are in charge of the Health of the community to preserve life, so that innocent may be protected and the guilty may be punished.

In Paschim Bang Khet Mazadoor Samiti vs. State of West Bengal³ Court follows Parmanad Katara’s ruling the Supreme Court has held that denial of Medical Aid by Government Hospitals to a injured person on

The ground of non-availability of beds amounted to violation of Rights to Life under Article 21 of the Constitution of India.

A historical Judgment delivered by the Supreme Court in the case of Consumer Education and Research Centre vs. Union of India⁴ in this case Supreme Court has held that “the Right to Health and Medical care is a fundamental right under Article 21 of the Constitution of India as it is essential for making the life of the Workman meaningful and purposeful with dignity of person Right to Life in Article 21 includes protection of the health and strength of the worker. The expression” Life” in Article 21 does not connote mere animal existence. It has a much wider meaning which includes Right to Livelihood, better standard of Life, hygienic condition in workplace and leisure.”

The Court also stated that,” it Union or State Government or an industry, public or privet is enjoined to take all such action which will promote health, strength and vigour of the workman during period of employment and leisure and health even after retirement as basic essentials to life within its fold, some of the finer facts of human civilization which makes life worth living.”

Health of the worker enables him to enjoy the fruit of his labour, Medical facilities to protect the health of workers are, therefore, the Fundamental Human Rights to make the life of workman meaningful and purposeful with dignity of person. The Court laid down the following guidelines to be followed by all asbestos industries, these are as:-

1. All asbestos industries must make health insurance of the workers employed in industry,
2. Every worker suffering from occupational health hazards would be entitled for compensation of rupees of One Lakh ,
3. All asbestos industries must maintain the health record of every worker up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of the employment whichever was later.
4. "Mevabrare filter lest" to detect asbestos fiber should be adopted by all the factories at par with Metalliferrous Mines Regulations, 1961 and Vienna Convention.
5. All the factories whether covered by the Employees State Insurance Act, or otherwise Act, or Workmen's Compensation Act, or otherwise, should insure health coverage of every worker.

The Supreme Court further directed the centre and all the State Government to review after every 10 years or when the International Labour Organization gives direction in this regard the standards of permissible exposure limit value of fiber in time with the International Standard the Court also directed the authorities to consider inclusion of such of those small scale industries, factories to protect health hazards of workers engaged in the manufacture of Asbestos or its ancillary products.

In *Vikram Deo Singh Tomar vs. State Bihar*⁵ in this case a public interest litigation, it was brought to the notice of the Court that the female inmates of the "Care Home Patna" were compelled live in inhuman conditions in an old ruined building. They are illiterate and provided insufficient poor quality food, and no medical attention to them. In this case Supreme Court held that "the right to live with dignity" is the fundamental right as well as Human Rights of every citizen and the State is under duty to provide at least the minimum conditions ensuring human dignity. The Court directed the State to take immediate steps for the welfare of inmates of "Care Home Patna"

Right to get Pollution free Water, Air and Protection of Ecology and Environment Pollution is included in the "Right to Live" under Article 21 of the Constitution. In *Rural Litigation and Entitlement Kendra vs. State of*

Uttar Pradesh⁶ the Supreme Court ordered the closure of certain Lime Stone quarries on the ground that there were serious deficiencies regarding safety and them.

In *Taj Mahal Corridor case* Delhi Factories case Supreme Court also decided that the Water Air and Sound pollution is intolerable, so Factories are shifted from near to Taj and Delhi City to outside the City. Recently Delhi State Government Chief Minister started Odd and Even number vehicles run alternate days for reducing and controlling Air and Sound Pollution.

CONCLUSION:-

In the last, as the subject itself is very wide there is no appropriate conclusion as Human Rights is concern. No doubt these rights has been incorporated in Indian Constitution. However, it is still a failure with events of Human Rights violation making headline in one form or the other. The violation of Human Rights may be in deferent from. We should be ashamed with rising issue of Honour Killing, Corporal Punishment, Custodial Death, Fake Encounter Killing, etc. If we want to give the exact interpretation of term Unity in Diversity it is the responsibility of every Indian to irrespective of Race, Colour, Sax, Caste, Language, Religion, Political or other opinion, National or Social origin Property, Birth or other status. To erase Human Rights violation may be impossible but it always possible to bring charges if we take individual responsibility on our own shoulder. So that the Human Rights are Natural Rights and its fully embodied and adopted in our Constitution.

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