

Human Rights in India: Theory and Practice

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Abstract

Democracy and human rights are the two sides of the same coin. In democratic countries, human rights occupy a prominent place. There is great respect and recognition of human rights. While in non-democratic countries, human rights are curtailed to some extent. But in present century, many democratic countries have been targeted for the human right abuse at large. India is world's largest democratic country has a detailed chapter on fundamental rights in part-III of the constitution. The constitution has made a provision for the protection of fundamental rights under article 32 and 226 through which different types of writs can be issued for the defence of fundamental rights. Theoretically, there is a detailed deliberation on the protection of fundamental rights in the constitution and also there is National Human Rights Commission for the protecting and promoting human rights in India. In addition to this, there are state level Human Rights Commissions also. There are International, national and state level non-governmental organisations that are perpetually monitoring human rights at length. But despite this, practically there are exorbitant violations of human rights in India.

In this backdrop, this paper aims to demystify that 21st century marked an excessive human rights violations in India. The arbitrary arrest and detention, freedom of assembly and expression, unfair trials, excessive use of force, organised crimes in the name of religion, caste based domination are the key domains of human rights violations in India. This paper concludes that, India needs to frame protection of human rights policy in India that can cater the need for the protection human rights at length.

(Key Words: Crime against humanity, Fake encounters, Sexual harassment, Policy, Discrimination)

Introduction:

Human Rights are the norms that aim to protect all human beings everywhere from social, economic, political, religious abuses. Human rights are a set of principles concerned with equality and fairness. They recognise our freedom to make choices about our lives and to develop our potential as human beings. They are about living a life free from fear, harassment or discrimination. Human rights can broadly be defined as a number of basic rights that people from around the world have agreed are essential. These include the right to life, the right to a fair trial, freedom from torture and other cruel

and inhuman treatment, freedom of speech, freedom of religion, and the rights to health, education and an adequate standard of living.

These human rights are the same for all people everywhere—men and women, young and old, rich and poor, regardless of our background, where we live, what we think or what we believe. This is what makes human rights ‘universal’.

Governments whether they are democratic or non-democratic must have a particular responsibility to ensure that people are able to enjoy their rights. They are required to establish and maintain laws and services that enable people to enjoy a life in which their rights are respected and protected. In addition to government, judiciary also plays a vital role in the protection of human rights. Every nation has articulated a detailed law on human rights. Universal Declaration of Human Rights on 10th December 1948 by United Nations is the global promise on human rights. There are other so many treaties on human rights like European Convention, International Covenant on Civil and Political Rights, The American Convention on Human Rights, The African Charter on Human and People’s Rights etc.¹ all these covenants and treaties talk about human rights and give a message to the governments to protect and promote human rights.

Globally the champions of human rights have most often been citizens, not government officials. In particular Non-Governmental Organisations (NGOs) have played a cardinal role in focusing the international community on human rights issues. For example, NGO activities surrounding the 1995 United Nations Fourth World Conference on Women in Beijing, China, drew unprecedented attention to serious violations of the human rights of women. NGOs such as Amnesty International, the Antislavery Society, the International Commission of Jurists, the International Working Group on Indigenous Affairs, Human Rights Watch, Minnesota Advocates for Human Rights, and Survivors International monitor the actions of governments and pressure them to act according to human rights principles.

In every nation, human rights are violated on different grounds, these violations come from both government and politics of majoritarianism. In recent decades, Amnesty International in its report disclosed that the world has witnessed a shocking rolling back of human rights which declared many hot-spots for human rights violations.² Human Freedom Index in its report in 2020, declared Yemen, Syria, Somalia, Myanmar, Sudan, Libya, Venezuela as the worst countries that have failed in human rights protection on the other, there are countries like New Zealand, Switzerland, Hong Kong, Canada, Denmark etc. that respect human rights the most.

Human Rights in India: Theoretical and Practical Aspects.

India is a multiparty, federal, parliamentary democracy with a bicameral legislature. Preamble declared that, people are the source of authority. Part-III of the Indian Constitution from Article 12 to 35 talks about fundamental rights of the citizens. There are so many national and state level commissions and acts for the protection of rights like;

1. The Protection of Civil Rights Act, 1955
2. Scheduled Castes And Scheduled Tribes (Prevention of Atrocities) Act, 1989,
3. National Commission for Human Rights, 1993

4. National Commission for Protection of Child Right, 2005,.
5. Protection of Human Rights (Amendment) Act, 2006.
6. Prevention of Children from Sexual Offences (POCSO) Act, 2012.

The protection of human rights is the prime responsibility of law and order maintaining authorities in a democratic country and India is no exception. There is a critical relationship between police working and protection of human rights. Theoretically there are so many laws, rules and regulations for the protection of human rights in India but practically, human rights are violated in India at large.

Human Rights Violations in India: Nature and Implications

The problem of human rights is very acute in India due to socio-political and historical reasons. Human rights abuses continued unabated in our country. These include extra judicial killings, fake encounters, custodial deaths in police lockup, and excessive use of force by security forces in disturbed areas, arbitrary arrest and detention, prolong detention etc. Armed Forces Special Power Act (1958) under section (4) empowers any commissioned officer of taking away life of any person in disturbed areas.³ This Act blindly violated human rights in North Eastern parts in general and Kashmir in particular. P.L. Mirmuth, A Supreme Court lawyer and patron of Centre for Dalit Rights observed the role of police and said that “police is supposed to uphold the rule of law are often seen helping the perpetrators of violence against Dalits and minority communities and women”⁴ Banglar Manabdhikar Suraksha Mancha (MASUM), a Human rights organisation based in West Bengal in its latest report of April 2021 also highlighted different types of cases of human rights violations.⁵

Human rights violations on the basis of nature of crime are mentioned below.

Non Registration of FIR: Registration of FIR is the first step towards justice. In many cases it has been observed that the police itself threatens the victims and forbid him/her to register FIR due to the involvement of either politicians or bribe or laxity of police.

Misuse of Power of Arrest: Section 41 of Criminal Procedure Code (CPC) empowers to arrest without orders from the magistrate or without any warrant of arrest. Thus, it is the most important and potent weapon in the hands of police which ultimately has repercussion over the human rights. Mostly, it has been observed that, people are detained without any fault or involvement in any activity. In 2008, 5 cops entered into the house of Jinda Ram, in Sirsa (Haryana) beating him up and looting. The Arrest of Anna Hazare in 2011 is also an example of this. There are so many other examples also with regard to the misuse of power of arrest.

Misuse of the Power of Shoot-to-Kill Order: It is a type of extrajudicial killing and is also known as police encounters is highly dreadful having a great possibility of the violation of the human rights. In India so many police encounters are reported especially in UP where 73 people were killed from March 2017-March 2019. ⁶ In recently, three labourers were encountered in Shopian District in the pretext that they are militants but actually, they were labourers from Rajouri District.

Torture in Police Custody: Torture and violence by police in custody have been a big issue for a long time. The numbers of such incidents have increased over the years in many parts of the world and India. It is a fact that police resort to third-degree methods for obtaining confessions and

statements from the accused. Such methods often result in serious injuries and even death. According to the India Annual Report on Torture 2019, between 2001 to 2018, 1,727 persons have died in police custody (including those in judicial remand) and those who have been arrested but not yet produced before the court. On average, 96 persons die in custody every year.⁷ The Hindu newspaper reported 5 custodial killings in India daily.⁸ Custodial deaths are one of the highest forms of violation of human rights. It is a blunt attack on the right to life and liberty guaranteed by the Indian Constitution. The most recent of such dreadful incidents happened in the state of Tamil Nadu. P Jeyaraj (58) and his son Benicks (38) were taken into police custody after allegedly keeping their shop open during lockdown past the permitted hours. Jeremy Bentham is of the opinion that criminals should be educated in prison rather than torture, so that they can lead a better and self-sustaining life after their release.

Domestic Violence, Custodial Rape and Sexual Harassment: Women are the victims of domestic violence, custodial rape and sexual violence in different fields. Custodial rape takes place when the rape is done by a man in whose custody the woman is. Men who keep the woman in custody are generally in a very strong and powerful position. There are so many cases of custodial rape and sexual harassment in India. According to a report, UP tops in custodial rape cases in India.

Violation of Human Rights during COVID-19 Pandemic: The Hindu reported that when lockdown was imposed in March 2020, in four months over 1 crore migrant labourers returned to home states on foot.⁹ No cooperation from the government and during their migration they were beaten up by the police and paramilitary forces. According to Times of India, a group of five youths who had been walking for hours to reach their homes from Madhya Pradesh's Gwalior towards their native were forced to crawl and do frog by a constable at Nawada.¹⁰ Many people were brutally beaten by the police and other paramilitary forces all over the country instead they may be guided.

Due to the acute human rights violations, in the ladder of human rights index, the position of India is not stable. India has been criticised for human rights abuses at the global level. According to Human Freedom Index report 2020, India ranked 111th position out of 162 nations, earlier in 2019 India ranked 94th position. This shows the deteriorating position of India in Human Rights protection as India fall 17 spots in one year.

Conclusion and Policy Recommendations

In the end it can be concluded that, India being the world's largest democratic country has adopted a detailed chapter on fundamental rights in part third of the constitution. Theoretically, we have many Commissions, Treaties; Acts etc. on human rights but practically, the out-put is not favourable for India at the international level. India's record is not good in human right index. India needs to work more on human rights and better its position in the ladder of human rights. Some policy recommendations are suggestive in nature for the betterment of the record on human rights in India.

1. In order to protect the human rights in India, India needs to frame Protection of Human Right Policy (PHRP). Though National Human Right Commission is there to monitor the human rights cases but the need of the hour is to implement at the gross root level. Two third of India's population lives in rural areas and are not well educated. So education on Human Rights is to be made compulsory up to 10th standard as an independent subject.

2. Every govt. employee from peon to highest bureaucrat before joining the govt. job must affirm an oath and submit an undertaking that he/she abide by the ideals of fundamental rights and will never harm human rights of the citizens.
3. All politicians before filling their nomination papers must submit an undertaking on the respect of human rights of the citizens. The winning candidates must affirm an oath also regarding the protection of Human rights.
4. CCTV cameras are to be installed in sensitive areas, bus stands, hotels, police stations, railway stations etc.
5. There is an urgent need to frame laws for those who perpetrate torture in custody. Criminals should not be treated like animals; they are to be guided through counselling so that they do not do harmful acts after their release.
6. Parents should act as CCTV cameras and needs to take care of their children particularly girls and not let their daughters go out in late hours.
7. The films that instigate the youths for committing crimes like theft, rape, kidnaping, murder, torture etc. should be banned and heavy penalties should be imposed on their directors.
8. National, state, district, tehsil, block and village level committee to be constituted to protect and promote human rights.
9. NGO's are to be encouraged and must be supported by the government with regards to the protection and promotion of human rights.
10. To survey those countries who are the champion of human rights protection and take expertise from them.
11. In disturbed areas, AFSPA is to be reframed; common person should not be harassed.

End Notes

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