

HUMAN RIGHTS IN INDIA:

Introduction The State maintains the framework of social order by implementation of various laws without which well ordered social life would not be possible. Various philosophers of social contract theory are of the view that object of the creation of state is to maintain and protect the rights of individuals. According to Aristotle, State came into existence out of base necessities of life and continues for the sake of good life.

1 Prof. Laski expressed that State is known by the rights it maintains.

2 Similarly Locke was of the view that end of state is to remove the obstacles that hinder the development of an individual.

3. Thus, the existence of the state is recognized with the protection of rights and liberties of individual which is the main object of state. Protection of the dignity of an individual is essential for harmony in the society, as its violation can have grave impact on individual in particular and on society in general. Each individual is entitled to some rights which are inherent to human existence. Such rights should not be violated on the grounds of gender, race, caste, ethnicity, religion etc. these are called human rights. Human rights are also known as basic rights, fundamental rights, natural rights or inherent rights. The concept of human right is not a new phenomenon, 'Human Rights' is a twentieth century term but its notion is as old as humanity. It has gone through various stages of development and has taken long time to become the concept of present day. These rights had place in all ancient societies though referred by different names

4. it includes civil rights, liberties and social cultural and economic rights. These rights are essential for all individual as these are consonant with the freedom and dignity and ultimately contribute to social welfare.

5. Protection of human rights is a necessity for the development and growth of an individual personality, which ultimately contributes in the development of the nation as a whole. It is an internationally recognized issue and various international instruments have been established for the protection of human rights.

The concept of human rights *Advocate, Punjab and Haryana High Court, Chandigarh

1 J.S. Badyal, *Abc of Political Science* 73 (Raj publishers (Regd.), Jalandhar, 2005).

2 Id. at 40. 3 *Supra* note 1. 4 Dr. S. Subramanian, *Human Rights International Challenges Vol.1* 3 (Manas Publication, New Delhi, 1997). 5 Available at http://shodhganga.inflibnet.ac.in/bitstream/10603/8112/10/10_chapter%201.pdf (Last visited on September 28, 2016).

Published in Articles section of www.manupatra.com Protection of Human Rights in India 23 is dynamic and adapts to the needs of the nation and its people. The ultimate purpose of the national as well as international law is to safeguards the human rights of the people. At international level various efforts

have been made for the protection of human rights. The United Nations through its charter represents a significant advancement in the direction for the promotion as well as protection of human rights. International bill on human rights has been incorporated in the UN Charter. The UN Charter contains various provisions for the promotion of human rights and fundamental freedoms in the Preamble and in various Articles 1, 13(b), 55, 56, 62 (2), 68 and 76(c).

6. Apart from UN Charter there are four international instruments created under the auspices of the United Nations known as International Bill of Human Rights, which include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social, and Cultural Rights 1966, the Optional Protocol to the International Covenant on Civil and Political Rights, 1966.

7. The international human rights regime is continuously growing with the passage of time, it provides certain accepted legal standards which all the nations should accept and implement in their domestic laws. The Governments of all the nations must work to promote the welfare of people by eliminating all forms of discriminations and provide right to equality and justice to all.

2. Human Rights in India is the biggest democracy in the world. Being a democratic country one of the main objectives is the protection of the basic rights of the people. Government of India has given due consideration to the recognition and protection of human rights. The Constitution of India recognizes these rights of the people and shows deep concern towards them. The Universal Declaration of Human Rights contains civil, political, economic, social and cultural rights. Constitution guarantees most of the human rights contained in Universal Declaration of Human Rights.

Part III of the constitution contains civil and political rights, whereas economic, social and cultural rights have been included in Part IV of the Constitution.

8 All the statutes have to be in concurrence of the provisions of the Constitution.

6 S. K. Kapoor, International Law & Human Rights 800(Central Law Agency, Allahabad, 17th edition 2009). 7 Id. at 817. 8 Supra note 6 at 886. Published in Articles section of www.manupatra.com Vol. 2 Jamia Law Journal 2017 The philosophy and objective of the Constitution of India is enshrined in the preamble which include the protection of the dignity of an individual. For the fulfillment of this objective Part III of the constitution guarantees fundamental rights to people which are essential for the development of an individual personality, these rights include right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to constitutional remedies. It is the duty of the central as well as state Governments to provide adequate conditions to each individual to enjoy their human rights. The constitution through Directive Principles of State Policy enshrined in the Part IV of the Constitution, ascertains the duties on the government to work for the welfare of the people and protection of human rights of the people. These are guiding principles for the state to make policies regarding distributive justice, right to work, right to education, social security, just and humane conditions of work, for promotion of interest of weaker section, raise the standard of nutrition and standard of living and to improve public health, protection and improvement of environment and ecology etc. so that each individual can enjoy rights to the fullest.

3. Role of the Judiciary Only provision for the fundamental rights does not fulfill the objective of 'protection of dignity of an individual', but free enjoyment of the rights has to be ensured. Therefore, Article 32 guarantees right to constitutional remedies, i.e. right to move to Supreme Court to enforce fundamental rights. It is constitutional mandate of judiciary to protect human rights of the citizens. Supreme Court and High Courts are empowered to take action to enforce these rights. Machinery for redress is provided under Articles 32 and 226 of the constitution. An aggrieved person can directly approach the Supreme Court or High Court of the concerned state for the protection of his/her fundamental rights, redress of grievances and enjoyment of fundamental rights. In such cases Court are empowered to issue appropriate order, directions and writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari. Judiciary is ultimate guardian of the human rights of the people. It not only protects the rights enumerated in Constitution but also has recognized certain unenumerated rights by interpreting the fundamental rights and widened their scope. As a result people not only enjoy enumerated rights but also un-enumerated rights as well. Published in Articles section of www.manupatra.com Protection of Human Rights in India 25 Supreme Court in Maneka Gandhi v. Union of India,

9 interpreted the right to life and to widen its scope and deduced un-enumerated right such as "right to live with human dignity". Supreme Court propounded the theory of "emanation" to make the existence of the fundamental right meaningful and active. Thereafter, in many cases court such as People's Union for Civil Liberties and another v. State of Maharashtra and others,

10 Francis Coralie Mullin v. The Administrator, Union Territory of Delhi

11. held that right to life includes right to live with human dignity. Therefore, through the judicial interpretations various rights have been recognized though they are not specifically provided in Part III of the Constitution. The rule of locus standi, i.e. right to move to the court, whereby only aggrieved person can approach the court for redress of his grievances has been relaxed by the judiciary. Now court through public interest litigation permits public spirited persons to file a writ petition for the enforcement of rights of any other person or a class, if they are unable to invoke the jurisdiction of the Court due to poverty or any social and economic disability. In S.P. Gupta v. Union of India and others,

12. Supreme Court held that any member of the public can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of poverty or any other disabilities. Person can even write letter to the court for making complaints of violation of rights. Public interest litigation is an opportunity to make basic human rights meaningful to the deprived and vulnerable sections of the community. To assure vulnerable section social, economic and political justice, any public spirited person through public interest litigation can approach the court to protect their rights on behalf of aggrieved persons who cannot approach the court themselves due to their vulnerable conditions. Similar observations have been made by Supreme Court in various judgments such as in Bandhua Mukti Morcha v. Union of India,

13. Ramsharan Autyanuprasi and another v. Union of India and Others,

14 Narmada Bachao Andolan v. Union of India.

15 Therefore, public interest litigation has become the tool for the protection of human rights of the people in India. The oppressed sections of the society are more prone to the violation of human rights. Most vulnerable sections of society are children, women and socially and 9 AIR 1978 SC 597. 10 2014 (10) SCC 635. 11 (1981) 2 SCR 516. 12 AIR 1982 SC 149 13 (1984) 2 SCR 67. 14 AIR 1989 SC 549. 15 (2000) 4 SCJ 261. Published in Articles section of www.manupatra.com Vol. 2 Jamia Law Journal 2017 educationally weaker sections of society. Judiciary has taken many steps to ensure protection of human rights of these sections. Children are more prone to exploitation and abuse. The rights of the children are needed to be specially protected because of their vulnerability. For this reason United Nations Convention on the Rights of the Child was adopted in 1989¹⁶. This convention brings together children's human rights, as children require safety and protection for their development. Judiciary is playing a commendable role in protecting the rights of children from time and again. There are various instances where judiciary intervened and the rights of children. In the case of Labourers working on Salal project v. State of Jammu and Kashmir

17. Supreme Court held that child below the age of 14 years cannot be employed and allowed to work in construction process. Court has issued various directions related to child labour. Supreme Court in Vishal Jeet v. Union of India

18. asked governments to setup advisory committee to make suggestions for eradication of child prostitution and to evolve schemes to ensure proper care and protection to the victim girls and children. The Supreme Court further in Gaurav Jain v. Union of India

19. showed its concern about rehabilitation of minors involved in prostitution and held that juvenile homes should be used for rehabilitation of them and other neglected children. Mumbai High Court in Public at large v. State of Maharashtra

20. rescued children from flesh trade and passed order for checking sexual slavery of children and for their rehabilitation. Children are not only prone to sexual abuse but they are also sometimes kept as bonded labourers as was in the case of People's Union for Civil Liberties (PUCL) v. Union of India

21 where the Supreme Court released child labourers and also ordered for grant of compensation to them. Concern of the Supreme Court about the protection of rights of children does not end here it reiterated the importance of compulsory primary education vis-a-vis eradication of child labour in the case of Bandhua Mukti Morcha v. Union of India.

22 ¹⁶ Available at <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx> (Last visited on October 5, 2016). 17 AIR 1984 SC 117. 18 1990 (3) SCC 318. 19 1997 (8) SCC 114. 20 (1997) 4 Bom CR 171. 21 1998(8) SCC 485. 22 (1997) 10 SCC 549. Published in Articles section of www.manupatra.com Protection of Human Rights in India 27 Supreme Court in Sakshi v. Union of India

23 highlighted the need to establish procedure that would help the child victim to testify at ease in the court and held that proceedings should be held in cameras. Delhi High Court in Sheba Abidi v. State of Delhi

24 observed that child victims are entitled to get support person during trial and also established that child victims can testify outside the court environment. Women are considered weak in our society which has resulted in the backwardness of women in every sphere. Women remains oppressed ones and are often denied basic human rights. They are subjected to violence in society whether it is within four walls of the house or at workplace. Despite the provision of right to equality enshrined under Article 14 of the Constitution, they are subjected to discrimination. Gender is considered to be the most important factor as for as Indian labour market is concerned. Discrimination against women laborer in terms of wage payments is a very common phenomenon in India. Wages earned by women are generally lesser than their male counterparts.

25 However, Article 39 of the Constitution guarantees the principle of equal pay for equal work for both men and women. Despite the guarantees of equal rights to women still they are not equally treated with men. Supreme Court has played remarkable role in protection of their rights such as in case of Associate Banks officers Association v. State Bank of India,

26 Supreme Court protected the rights of women workers and held that women workers are in no way inferior to their male counterparts and hence there should be no discrimination on the ground of sex against women. In State of Madhya Pradesh v. Pramod Bhartiya

27 Supreme Court held that under Article 39 the State shall direct its policy towards securing equal pay for equal work for both men and women. Article 21 i.e. protection of life and personal liberty was invoked for the dignified life for the prostitutes by Supreme Court in case of State of Maharashtra v. Madhukar Narayan Mandlikar

28 held that even a woman of easy virtue is entitled to privacy and no one can evade her privacy. In Bodhi Satwa Gautam v. Subra Chakarborty

29 Supreme Court has held that rape is a crime against basic human rights. Supreme Court laid down guidelines for protection of women against sexual harassment at work place in case of 23 AIR 2004 SC 3566. 24 113(2004) DLT 125. 25 Shayan Javeed and Anupam Manuhaar, "Women and Wage Discrimination in India: A Critical Analysis March 19 – 2013" 2 IJHSSI 7(2013) 26 AIR 1998 SC 32. 27 AIR 1993 SC 286. 28 AIR 1991 SC 207. 29 AIR 1996 SC 922. Published in Articles section of www.manupatra.com Vol. 2 Jamia Law Journal 2017 Vishaka v. State of Rajasthan

30 and reiterated the same in Medha Kotwal Lele v. Union of India.

31 Guidelines for ensuring the safe work environment for women were given and made it mandatory for employer to take responsibility in cases of sexual harassment at work. Supreme Court also protected the rights of workman in BALCO Employees Union (Regd.) v. Union of India,

32 Consumer Edu. & Research Centre v. Union of India.

33 In People's Union for Democratic Rights v. Union of India

34 the Supreme Court stated that releasing persons from bonded labour was connected to rehabilitation process in order to give full remedy. In *Workmen v. Rohtas Industries*

35 the Supreme Court observed that the right to equality became instrumental in protecting right of workers against unreasonable closures and discriminations in payment of pensions. Judicial system protects the rights of its citizens including prisoners. The Supreme Court by interpreting Article 21 of the Constitution protected and preserved the rights of the prisoners. In case *Prem Shankar v. Delhi Administration*

36 Supreme Court held that practice of using handcuff and fetters on prisoners violates the guarantee of human dignity. A landmark judgment in *D.K. Basu v. State of West Bengal*,

37 protected the rights of the prisoners and laid down various guidelines for arrest and detention to prevent the custodial violence and observed that right to life include right to live with human dignity. Similarly Court in *Sheela Barse v. State of Maharashtra*

38 dealt with an issue of mistreatment of women in police station and court laid down various guidelines for the protection of rights of women in custodial/correctional institutions. Further in *Citizens for Democracy v. State of Assam and others*,

39 Supreme Court held that handcuffing and tying with ropes is inhuman and in utter violation of human rights guaranteed under the international laws and the laws of the land. Court directed that handcuffs or other fetters shall not be forced on prisoners- convicted or under trial while lodged in jail or even while transporting, police and jail authorities shall have no authority to direct handcuffing of any inmate of jail or during transportation without permission from the 30 1997(6) SCC 241. 31 2013(1) SCC 297. 32 2002(2) SCC 333. 33 1995(3) SCC 42. 34 1982(3) SCC 235. 35 AIR 1996 SC 467. 36 (1980) 3 SCC 538. 37 (1997) 1 SCC 416. 38 AIR 1983 SC 378. 39 (1995) 3 SCC 743. Published in Articles section of www.manupatra.com Protection of Human Rights in India 29 magistrate. While executing of arrest warrant person arrested cannot be handcuffed without obtaining orders from magistrate. Therefore, Judiciary is playing a crucial role in the protection of the human rights of the people from time and again by expanding the scope of the rights and recognizing new rights with the need of time. Judiciary has expanded the scope of right to life to include entitlements which are vital for the enjoyment of right to life with dignity. Courts have protected right of the people in numerous cases whether it is a right against violence in custody, to live in a pollution free environment, right to health, right to adequate wages of the workers, safety of the women at workplace, compensation to rape victim and rights of the child labourers and so on. 4. The Protection of Human Rights Act, 1993 The need for the protection of human rights issues both at national and international level led to the enactment of an Act which specifically deals with the protection of Human rights called 'The Protection of Human Rights Act, 1993'. The objective of the Act is to provide organizational structure for protecting human rights. The Act provides for Human Rights Commission at national level as well as at State level in each state and further for setup of Human Rights Courts at district level for better protection of human rights and matters connected therewith. The Act defines human rights in Section 2(d) as "the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the

International Covenants and enforceable by courts in India.” The above definition, however, limits the scope of the functioning of the National Human Rights Commission. Though India ratified the two Covenants, these are International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

40 International covenants are not justifiable before the courts, so there should be laws in the country which is to be with the conformity of these conventions. Therefore, the rights guaranteed in the Constitution are in conformity with these International Conventions. 40 Justice J.S. Verma, Second Justice M. Hidayatullah Memorial Lecture “Protecting Human Rights through the Judicial Process” on 21 December 2002 at Raipur, 15, available at <http://nhrc.nic.in/Documents/JHidyaMemo-II.pdf> (Last visited on August 8, 2016). Published in Articles section of www.manupatra.com Vol. 2 Jamia Law Journal 2017

i) National Human Rights Commission It is the State’s primary responsibility not only to protect the human rights of the people from any violation but also the prevention of such violations by providing the requisite means for its realization and further ensuring human development. State discharged such responsibility through its institutions. So at national level, National Human Rights Commission was established under the Protection of Human Rights Act of 1993 to fulfill this responsibility. Section 3 of the Act provides for the composition of National Human Rights Commission. Commission is composed of a Chairperson and four other members. In order to provide representation to the backward and oppressed sections of the society, besides these members, the chairmen of the National Commission for Minorities, the National Commission for SCs, the National Commission f