

# CONSTITUTIONALIZATION OF JUSTICE AND HUMAN RIGHTS IN INDIA: PROSPECTS AND CHALLENGES

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## Abstract

*The enshrinement of a powerful legal framework encompasses Sustainable Development Goals (SDG) and help develop the socio-economic and political status of the citizens of the country. As India is a signatory to the Universal Declaration of Human Rights (UDHR), the Constitution of India sowed seeds of social, economic, and political justice to be enjoyed by the poor and rich alike after decades of subjugation by Britishers. In a free India, the Constitution has provided legal frameworks to the citizens for the establishment of an egalitarian society. Further, the Constitution gives equal opportunity to all individuals in a society without any discrimination on the basis of religion, caste, creed, colour, group, sex, ethnicity or language. In a democracy like India the sustainable development goals can only be achieved by sustaining human rights of all individuals and strengthening the social, economic, political, and cultural fabric of the nation. But, the socio-economic and political rights seem to have diluted these days in terms of the curtailment of freedom of speech and expression as well as blatant human rights contraventions. The sociology of justice appears to be viewed in a religious angle due to the prevailing state protected lawlessness across the country. To my mind, the judicial remedy is a panacea for all social ailments. The present paper attempts to discuss the condition of the human rights and the Constitutionalization of Justice in the country. The study also focused to get the answer whether the human rights infringements have vitiated the multi-dimensional social, cultural, and religious anatomy of the nation. The paper concludes the discourse by endorsing that the Constitution guaranteed to secure the fundamental rights of all communities but judicial remedy and justice for all*

*still seems to be a hallucination even after seventy years of independence.*

**Keyword: Human Rights, Indian Constitution, Sustainable Development Goals, Constitutionalization of Justice**

## 1. INTRODUCTION

Indian culture is an amalgamation of diverse customs and rituals. The rights of human being have been the cornerstone of many civilizations since centuries; therefore, the idea of human rights was not mysterious to mankind throughout the history of human civilization.

Since the framing of the Constitution, the remedial apparatus was provided to the people to sustain their human rights within legal jurisprudence. The harsh regressive measures adopted by Britishers against Indians snatched the fundamental freedoms and the civil and political rights of the people during freedom movement. During British rule, economic growth of the country was flourished but the basic human rights, civil liberties, political, social and economic rights and freedom of expression had been repugnant for the aboriginal and indigenous citizens.

The Indian Constitution provided basic facilities to avail human rights by citizens. The Constituent Assembly endorsed certain stuff of the Universal Declaration of Human Rights (UDHR) in the Constitution of India. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular, and Democratic Republic. The term 'democratic' indicates that the government acquires its sovereignty from the will of the people. It creates the feeling that every individual is equal before law irrespective of race, religion, language, sex and culture. The Preamble to the Constitution extends justice – social, economic and political, liberty of thought –

expression, belief, faith and worship, equality of status and of opportunity and fraternity guaranteeing the dignity and sobriety of the individual and the unity and integrity of the nation.

Fundamental rights vary from ordinary rights in such a way that the former are inalienable. No law, ordinance, custom, usage, or administrative order can curtail or truncate them. Any law, which tends to violate the fundamental rights, is inoperative. The Supreme Court of India recognizes these fundamental rights as 'Natural Rights' or 'Human Rights' (Kaur, 2017).

Article 14 of the Constitution manifests the general right of all individuals egalitarian before the law, while Article 15 disallows the State from discriminating against any citizen on the basis of religion, race, caste, sex or place of birth, and prohibits any restriction on any citizen's access to any public place, including wells and tanks. Equality of opportunity for all citizens in matters of public employment is guaranteed under Article 16. Article 17 scraps untouchability and makes its practice an offense punishable under law. Both Articles 15 and 16 enable the State to make special provisions for the advancement of socially and educationally backward classes, for such castes and tribes as recognized in the Constitution (known as the Scheduled Castes and Scheduled Tribes) require very special treatment for their uplift. Article 18 discards all non-military or non-academic designations.

The right to freedom guaranteed to all citizens under Article 19 encloses the right to freedom of speech and expression, the right to assemble peaceably and without arms, the right to form associations or unions, the right to move freely throughout the territory of India, the right of residence, and the right to practice any profession, or to carry on any occupation, trade or business. The protection of a person in respect of conviction of offense under Article 20 includes protection against ex post facto criminal laws, the principle of autrefois convict and the right against self-incrimination. Article 21, the core of all fundamental rights provisions in the Indian Constitution, ordains: No person shall be deprived of his life or personal liberty except according to procedure established by law. Article 21A proclaims "the State shall provide free and compulsory education to all children of the age of six to

fourteen years in such manner as the State may, by law, determine." The rights of a person, arrested and detained by the State authorities, are provided in Article 22. These include the, right to be informed of the grounds of arrest, the right to legal advice and the right to be produced before a magistrate within 24 hours of arrest (except where one is arrested under a preventive detention law). The right against exploitation includes prohibition of trafficking in human beings and forced labour (Article 23), and prohibition of employment of children below 14 years of age "to work in any factory or mine or in any other hazardous employment."

Subject to public order and morality, all persons are equally entitled to freedom of conscience and the right to profess, practice and propagate religion (Article 25). Every religious denomination or section also has the right to establish and maintain religious institutions and manage their religious affairs (Article 26). No one may be compelled to pay any religious taxes (Article 27). The wholly State-funded educational institutions are barred from imparting religious instructions (Article 28).

The rights of any section of citizens or a minority to promote its distinct language, script or culture, to have access to State funded educational institutions (Article 29), and to establish and maintain educational institutions of its choice (Article 30) are also guaranteed.

The right to Constitutional remedies is essentially the right to move the Supreme Court of India for enforcement of the above rights (Article 32). The Supreme Court is vested with wide Constitutional powers in this regard.

They include the power to issue directions, orders or writs for the enforcement of the fundamental rights (Article 32(2)). State (i.e. provincial) High Courts too have identical powers (Article 226). As laws inconsistent with or in derogation of the rights conferred by part III of the Constitution are void (Article 13), the Courts have the power to adjudge the Constitutional validity of all laws. Furthermore, by virtue of Article 141, the law declared by the Supreme Court shall be binding on all courts in India (Human Rights and Indian Constitution, n.d.).

Despite framing multiple laws and policies human rights violations have been occurring on certain intervals in the country. Violence against Dalits, minorities, tribals,

women, children has been increasing at an alarming rate. Further, sexual violence against women and trafficking in children and women are at high risk these days. Forced labour and violations of equal participation in political, economic and social life seem to have deteriorated. In spite of framing laws, women in the country continue to suffer from domestic violence, acid attacks, rape, rape-cum-murder and so forth. The issues of the minorities, Dalits, tribals and other marginalised communities of the country need to be addressed and revamped on priority basis. Their issues should also be taken as human rights issues so that they deem fit to be recognised as par with other communities in all the field of our society.

The legal reform and implementation of Constitutional frameworks on grassroots level can mitigate the human rights violations meted out against Dalits, tribals, minorities and other vulnerable groups of the country. Besides, government needs to pay more attention towards the implementation of laws and policies and check whether it is adequately effectuated. By upholding Constitutionalization of justice and preventing human rights violations against women, children, youths, Adivasis, Dalits, minorities and other segregated communities of the society can only fill the gap of socio-economic disparity and political incongruity in the country.

## 2.OBJECTIVES

The key objectives of the paper comprise:

- ❖ To study the Constitutionlization of justice in India in present scenario;
- ❖ To examine the condition of human rights in the country;
- ❖ To inspect the effect of human rights violations for degrading the multi-dimensional social, cultural, and religious fabric of the nation;
- ❖ To investigate the prospects and challenges to uphold the Constitutional law in India.

## 3.POLITICAL RIGHTS AND HUMAN RIGHTS: MYTH OR REALITY

India seizes the opportunity of being the largest democracy in the world. Despite several defects and

inaccuracies, the gigantic universal adult enfranchisement is a testimony of country's idealistic democratic set-up. The Constitution gives voters an opportunity to elect their representatives in the House of the People of the Central Parliament i.e. the Lok Sabha and the State Provincial Legislative Assemblies in every five years. The members of the State Legislatures are liable to exercise their right to suffrage to form Council of States, i.e. Rajya Sabha which enjoys the Upper House of the Parliament. Further, the elected members of the Parliament and State Legislative Assemblies elect the President. And, both the Houses of parliament together elect the Vice-President.

The right to vote, the right to contest elections, and the conduct of elections are all governed by the Constitution (Part XV) as well as special laws like the Representation of the People Act, 1951. The Constitution provides legal remedies for the functioning of an autonomous Election Commission (Article 324), which has in fact exonerated itself quite noticeably in the recent elections, both provincial as well as parliamentary, and formulated an agenda for free and fair elections and nullification of the lawbreakers and dishonest politicians; but there is a lot need to be done. There are six fundamental rights enshrined in the Constitution of India which comprises Right to Equality, Right to Freedom, Rights against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, and Rights to Constitutional Remedies. In a large-sized and populated country like India, the pervasive poverty, dearth of adequate education seems to have complicated the case of human rights violations. The civil society groups also face gruesome harassment and intimidation for evoking legitimate grievances of the down-trodden communities of the country these days.

## 4.JUDICIAL REMEDIES AND HUMAN RIGHTS: PANACEA OR TRAUMA

The judiciary, among the three organs of the government, seem to have become the harbinger of human rights in India. It operates chiefly by encompassing human rights provisions of the Constitution. The courts in India appears to be a torchbearer to uphold fundamental rights and promote human rights jurisprudence. The Apex body of judiciary – Supreme Court and State High Courts possess

comprehensive powers to enforce fundamental rights and they interpret these powers on definite interregnum. The considerable benefaction of the judiciary to endorse human rights jurisprudence include two aspects: (i) the essential evolution and elaboration of the idea of human rights under Article 21 of the Constitution, and (ii) the systematic and procedural transformation of Public Interest Litigation (PIL).

### 5. MEDIA AND HUMAN RIGHTS: BOON OR BANE

The print and electronic media, including social media, supposed to be the sole source of information in any modern democratic society through which the people exercise their freedom of speech and expression. The freedom to seek information, the democratic right to receive news or gather knowledge, is important in making to enjoy these rights.

Generally, the apparatus of public information was the Press. These days, it is known as the media, which encompasses the press, the television, the radio, and ultimately the internet. The 'Fourth Pillar' plays an essential role in the largest democracy where hundreds of newspapers in Hindi, English and vernacular languages are published. During emergency in the year 1975-77, the gagging orders for the press were imposed for the first time in the history of the country. Then BBC played a transparent role to evoke the legitimate grievances of the public and tried to enlighten its listeners by presenting facts in relation to the imposed Emergency. Since then, freedom of the press or media became a catchline or slogan in the country. Taking into consideration the inclusiveness and impact of media these days, despite shortcomings or drawbacks, the contribution of media in disclosing and highlighting human rights issues cannot be denied.

A colonial law pertaining to official secrecy, the Official Secrets Act. 1923, however, remains a hurdle or obstacle in the productive employment of the freedom of information.

### 6. CONCLUSION

Fundamental rights are the bedrock of the Constitution. Article 14 of the Constitution of India reads as under:

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Human rights are considered the fundamental rights which encompasses development of the people and society alike. The absence of human rights in a society leaves the dignity of a person in danger. The provisions enshrined in the Articles of the Indian Constitution protects and preserves the fundamental rights or human rights of the people. The Preamble also talks about the fundamental freedoms and protection of the dignity of the individuals. The Indian Judiciary had even modified the rule of *locas standi* to safeguard human rights which push for the development of the concept of Public Interest Litigation. By employing public interest litigation, the sheer violations of human rights had been put before the Courts. Despite PILs cannot become a *locum tenens* for governance but the Constitutional sovereignty may be protected by using the apparatus of PIL to its fullest. PIL served the purpose in dispensing justice to the poor and sufferers. For example, PIL had led to the mass release of under trial prisoners who had served the maximum jail terms prescribed for offences during the trial itself. An independent judiciary can ensure and protect the rights of women, workers, children, prisoners, children, minorities et al. Therefore, judiciary supposed to be the ultimate guardian of the Constitution and thus can play a role of rescuer of the human rights of the people so that each individual can live with dignity. Protection of human rights is an important issue throughout the world. To safeguard human rights and dignity of the individuals, various international instruments have been incorporated. National endeavours have also been made such as enacting the Protection of Human Rights Act 1993. Provisions have been made under the Act for the establishment of the National Human Rights Commission as well as State Human Rights Commission in various States and it also provide for the constitution of Human Rights Courts at the district level so that the justice can be supplied to the victims of human rights violations at every level.

### 7. SUGGESTIONS

The elected government tried to destroy the central dogma of the Constitution by interfering in the judiciary

and by killing the spirit of the constitutional and autonomous bodies in the country. The thousands of crores of pending cases stressing on alternative dispute resolution mechanisms to settle cases. There should be collaborative efforts and adequate guidelines on the part of the judiciary and the executive to deal with the pending cases on speedy trial basis as mandated in the Constitution to safeguard the spirit of the Constitutionalization of justice and human rights in the country.

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