

HUMAN RIGHTS VIOLATION IN INDIA- A STUDY OF ITS CAUSE

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Abstract

Human Rights are the fundamental rights that are inalienable to every person of this universe as he or she has inherently entitled these rights by their birth as a human being. These rights have been provided to all the humans irrespective to their nationality, ethical origin, place of residence, sex, color, religion, or anything else, we can say that they have been provided without any kind of discrimination and are independent and protected by national as well as international laws. The concept of human rights is not recently emerged but it was developed around the 2nd world war & by the adoption of the Universal Declaration of Human Rights. One of the most populated countries “India” has a good set of laws that can help to tackle the prevalent abuses in the society but still there is a lot of abusive practices that violate Human Rights and do corruption, this curtails the citizen’s democracy. In this article, we are going to discuss the various offenses because of which some sections of the society having an impact on their human rights.

Key words- Human rights, India, violation, society.

Introduction

The concept of Human rights is based on the humanitarian approach, it is the approach that is based on the view that every human being in this world deserves respect and is entitled to live with dignity. From the very beginning, the struggle for the liberty and freedom of humans always exists. The struggle gives birth to the other struggles that abuse the dignity of humans and a lot of discrimination was created with the time among the humans, they were distributed by their nationality, ethical origin, and place of residence, sex, color, or religion. Due to the struggles and abusive practices against the weaker section of the society, various laws, conventions, and declaration took place to regulate the violation of human rights. Many authors and jurist wrote books on human rights, its importance and mentioned the struggle that weaker section is going through. One of the authors describes the concept of human rights in a meritorious way, which has been stated here-“The concept of human rights is closely connected

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with the protection of individuals from the exercise of State, Government or authority in a certain area of their lives, it is also directed towards the creation of societal condition by the state in which individual is to develop their fullest potential”².

We say that all Human Beings are born free and have equal dignity but in reality, the man himself has made other men unequal in many ways. Some have given privilege & some have been always deprived of their basic rights. The most common crime against human beings was slavery. It took a lot of years and struggle to get legal protection of the basic rights, many laws were enacted for the protection of individual or group of individuals.

FAMOUS DEFINITION OF HUMAN RIGHTS-

The definition of Human rights has been provided by many statues, eminent jurists, and authors. Some of them are-

“Human rights are those which are inherent in our nature and without which we can’t live as human being”, this definition has been defined under The United Nations Centre for Human Rights.

The Universal Declaration of Human Rights which adopted on Dec.10th 1948, defines human rights as “rights derived from the inherent dignity of the human person”

"Human rights" means the rights relating to life, liberty, equality, and dignity of the individual guaranteed under the Constitution or embodied in the International Covenants and enforceable by courts in India. "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December 1966. (Defined under S. 2 of The Protection of Human Rights Act, 1993.)

D.D Basu³ defined human rights in his book as follows- “Human rights are those minimum rights which every individual must have against the state or other public authority by virtue of being a member of the human family, irrespective of any other consideration”. He also stated that the concept of human right is as old as the ancient doctrine of natural rights made on natural law, the expression human is of the recent era.

² Scott Davidson, Human Rights (Law and political change), Open University Press 1993.

³ DD Basu, Human rights in constitutional laws, third edition, lexisnexis, 2008.

Justice Nagendra Singh said that the human personality and its absolute worth, regardless of color, sex, and race are the very foundation of human rights. These rights are essential for the adequate development of the human personality and human happiness and progress.

Hence, from the above-mentioned definition of Human rights, we can say that human rights represent the claim on the right that the individual or group has in this society. The human rights are universally applicable as they uphold human dignity, & are dynamic and evolutionary. These rights are the basic requirement for the survival of Human being in this society.

INDIAN PERSPECTIVE OF HUMAN RIGHTS-

Human rights evolution has evolved gradually over the past several centuries. In ancient times, Indian history contains many incidents, stories, and pronouncements that showed the prevalence of human rights.

We have described the evolution of Human rights in India under three heads, they are- Human rights in ancient times, Human rights in medieval times, human rights in modern times, let us discuss them in brief⁴-

A. HUMAN RIGHTS IN ANCIENT TIMES-

Every law has a history, therefore there is a huge milestone on the path on which the concept of human rights travelled for centuries then comes into existence. The shreds of evidence of human rights can be seen in the Vedic period of Indian culture. The charter of equality has been defined under Vedas in the following words- “No one is superior-inferior, all should strive for the interest of all and should progress collectively”. The stories of the Vedic period reveals that the society was committed towards human rights as they think respecting other people will be equivalent to respecting god. Moreover, all the religion including the minority religious group supported the importance of human rights.

B. HUMAN RIGHTS IN MEDIEVAL TIMES-

The Muslim era in India was the era which is known as medieval times. With the advent of Mughals, the Hindu's got suppressed badly. The condition of human rights was lost in the dark but when the ruling power of Mughals came to Akbar (1526- 1605), the concept of human

⁴ Irshad Ahmad Hurrah, International research journal of engineering & technology, Human rights in India- A historical perspective (1st-01-2019)- www.irjet.net/archives/V6/i1/IRJET-V6I1327.pdf

rights started again emerging. He made a policy 'DIN-E-ILAHl', in which he tried to preach the idea of secularism, religious tolerance, and religious movement that were got suppressed by other empires of Mughals (Aurangzeb, Babar, Humayun, etc).

C. HUMAN RIGHTS IN MODERN INDIA-

This era was started with the advent of British rule in India. With the start of colonial rule, the process of administration in India by the Britishers started with an introduction of the Regulation Act, 1773. By the establishment of this act, the rights of the people of India got suppressed and denied to them. In that atmosphere, many leaders came forward for the rights of Indians and to have right on their lands started fighting due to which Constitution of India Bill, 1895 took place, and the bill guaranteed the right to equality, expression, property, and personal liberty to every citizen. Thereafter, the series of resolution passes between 1917 and 1919. "Mrs. Besant's Common Wealth of 1923" was a major development bill that was drafted which contains a list of seven fundamental rights.

Then Nehru Report came into force which secured the fundamental rights that had been denied by Britishers, then Karachi resolution was adopted in March 1931 by the congress, further Supra committee report was a great development of fundamental rights in Indian History. The 1940s was the decade that has been remarkable the emergence of Fundamental Human rights by the U.N Assembly.

After Independence, various laws were made by the Indian Government, and the Constitution of India came into force that enlarged the concept of Fundamental right which covers the entire human race. But still, in practical life, more half of the population of India are facing violence in their human rights due to some reasons or some offences by other people. Let us discuss some of those offences in brief.

Offences that infringe the Human Rights of some vulnerable sections of society-

- CUSTODIAL VIOLENCE-

Torture in police custody has always been a topic of concern. The violation in the custody of the police was so common in the past. National Human Rights Commission has issued some directions to the states that if any death caused in police custody, the same has to be reported under National Human Rights Commission within 24 hours of the occurrence of such death.

However, India has restricted the violence of custodial torture but still, this crime is a crime that is taking place every day and violating the right of at least one prisoner in a day.

A report has disclosed that an average of five people dies every day in police custody in India. In 2019, 117 people died in Police custody and almost 1606 deaths were recorded which were held in judicial custody. The NHRC stated that “most deaths in police custody occur primarily as a result of torture”. The crime of custody violence is one of the most beastly offence that violates and infringe Human rights by torturing the prisoner without any authority.⁵

- CUSTODIAL RAPE-

Rape is a wrongful act of having sexual intercourse without the consent of a woman. Custodial rape is the rape that is done under the custody of the police. A landmark case Mathura rape case⁶, the judiciary has found an expanded definition in terms of power rape in the Penal Code. From Mathura to Rameeza Bai to Maya Tyagi to Suman Rani, all of them have a contribution to converting painful journey to winning justice by their continuous fight for their rights, these names of the women have etched into the history of Indian Judiciary and led to the movement of women empowerment. Custodial rape is horrible violence that curtails the right of women to have sexual intercourse with her consent and right on her body.

- RAPE-

Rape is the one of the common crime in India, there are a lot of landmark cases for the offense of rape, one of the most important landmark case is Mukesh v. State (NCT of Delhi)⁷ that changed the laws of India and have led to the amendment of criminal laws. The inhumanity of some people has risen the violence against women in India.

The government of India’s data has revealed that 32500 cases of rape were registered in the year 2017. It means almost 90 cases of rape have been recorded in India. On October 21, 2019, National Crime Records Bureau released a report that stated that 359849 cases were registered in 2017, and 237600 in 2018⁸. It is so shameful that most religious country like India has a

⁵ The wire, custodial torture continues unabated in India amidst culture of Impunity, available at <https://thewire.in/rights/custodial-torture-continues-unabated-in-india-amidst-culture-of-impunity-report>, (last visited 01.06.2021)

⁶ Tukaram v. State of Maharashtra (1979) 2 SCC 143

⁷ Mukesh v. State (NCT of Delhi) { (2017) 6 SCC 1 }

⁸ Varalika Mishra, Asia Times, A rape in India every 15 minutes government data,, available at <https://asiatimes.com/2020/01/a-rape-in-india-every-15-minutes-government-data/>, (last visited 01.06.2021)

huge number of violation of Human rights of women. A woman has right over her body and it should get respected by other people.

- **SEXUAL HARASSMENT AT THE WORKPLACE-**

Sexual Harassment is a crime of doing harassment of a woman sexually, touching her without her permission, verbal or physical conduct of sexual violence, and in not a tolerated way. Doing sexual harassment at the workplace or anywhere else infringes the Human right of women. By the landmark judgement of Vishakha's case,⁹ various guidelines were issued by the Supreme Court of India to protect the basic human rights of the women so that they can live with dignity. Sexual harassment accompanied by violence has become common. Sometimes it also arises so haywire that it can result in murder, rape, or grievous hurt or grievous hurt by acid attack. A survey stated that 100 best companies have a 30 percent increase in the number of cases of sexual harassment which are reported between 2018 and 2019.¹⁰

- **FAKE ENCOUNTER-**

A fake encounter is an extrajudicial killing of a person by police, it is an armed encounter in which police or security force fakely setup an encounter to kill the person for any reason. The most recent encounter of Vikas Dubey in July, 2020 in Uttar Pradesh has made a controversy that whether it was fake or not? The fake encounter causes unnatural deaths of people, for example- In Andra Pradesh generally, Naxalites has been targeted many times. Most of the time no investigation is done when an encounter takes place, it is a clear violation of Human Rights as no have the right to kill someone without a proper hearing, without a proper trial, and without judicial involvement. In 2019, Hyderabad police had an encounter with four men who were charged for the rape of a woman, in this encounter a controversy arise that it was fake as the men who were charged was unarmed and there was no good evidence that establishes that it was a real encounter¹¹.

⁹ Vishaka v. State of Rajasthan (1997) 6 SCC 241

¹⁰ Rica Bhattacharya, The Economic Times, India reports 14 percent rise in complaints of sexual hassasment in fy19, available at <https://economictimes.indiatimes.com/news/company/corporate-trends/india-inc-reports-14-rise-in-sexual-harassment-complaints-in-fy19/articleshow/71288712.cms>, last visited- 03.05.2021.

¹¹ Markandey katju, The week, fake encounter are cold blooded murders by the police, available at <https://www.theweek.in/news/india/2019/12/06/opinion-fake-encounters-are-cold-blooded-murders-by-the-police.html>, last visited- 03.05.2021.

- VIOLENCE OF MINORITY OR DALITS-

From ancient India, the practice of untouchability was common. In different states, there are different communities which got affected by the violence by the majority on the minority. Many reports have been made by many researchers, according to the one of the finest report “Human Rights Watch”¹², “Dalits and indigenous people known as Schedule tribes or Adivasis continued to face discrimination, exclusion, and the act of communal violence”.

In 2011, the United Nation stated that in India there is a lot of human rights abuse due to their caste system. Half of the population of India is facing abuse on their human rights. To change the social stigma and economic hardship, the Indian government repealed Criminal Tribes Act, 1871 and replaces it by Habitual Offenders Act, 1983 by creating a new list of so-called criminal tribes but even today due to the Prevention of Anti-Social Activity Act, Dalits have been facing an everyday struggle in their lives by living below poverty. The scheduled tribe and scheduled caste (Prevention of atrocities) Act, 1989 was enacted to uplift the Dalits. However, Dalits have said that this act has many loopholes, particularly S. 3 (iv) and (v) of the act is illustrating the non- user of these laws. Recently, in 2019 a lot of violence have caused by strikes and violence by the people of the minority who thinks that their right will be curtailed by Citizenship Amendment Bill.

- CHILD LABOUR-

Child labour is the employment of children due to which their exploitation is caused and they are deprived of their childhood, it is the illegal employment of children at any place. Apart from the employment of a child, child labour also sometimes consist of working under hazardous substances. Many parents force their children to work as they are so poor that they cannot even fulfil their basic needs. The children who are working have to face ill-treatment by their owners. Also, there is a rise in child bonded labour nowadays. It is a clear violation of the human rights of the children, due to this education of child gets also tangled. However, the constitution of India have also inserted the fundamental right under Article 21 (A) states that child should get education up to the age of 14 but in the society, there is still a lot of violation of the Human rights of children.

¹² India’s event of 2007, Human rights watch,
<https://www.hrw.org/legacy/englishwr2k8/docs/2008/01/31/india17605.htm>

A report¹³ that overviews the current situation in India states that in 2019, approx. 152 million children are still in child labour, mostly child labour occurs in the agriculture sector. This shows how much the situation is bad in India that even children are subject to have infringement of their human rights.

- **DOMESTIC VIOLENCE-**

Domestic violence is violence against women, in which her husband and her in-laws do violence against his wife or their daughter in law. It can be physically or mentally, the victim here is subject to have infringement of her human rights that is right to live dignity. The Indian laws have made many provisions of law to save women from the evils of this society who are violating her human right. Indian Penal code has introduced provisions related to cruelty (S. 498) and dowry death (S. 304 B) which declares both the offenses punishable. Moreover, the Indian legislature has made the Protection of Women by the Domestic Violence Act, 2005. The increase in the number of domestic violence against women gives rise to the infringing rights of those women.

In the pandemic of Covid-19 in India, according to the statistics¹⁴ about 86, percent of women have experienced domestic violence, and under which 77 percent of the victims don't even complain about it. From March 25, 2020, to May 31, 2020, almost 311477 complaints were registered by women. Hence, it shows how much struggle is there in Indian society that causes a lot of human rights violations.

SUGGESTIONS TO PREVENT VIOLATION & PROTECT HUMAN RIGHTS-

To prevent the violation of human rights and protect them, states should follow international law norms that have been provided for the welfare of Human Beings. The violation of Human rights gives birth to conflict among nations, individuals, or groups of individuals. Further, it always gives results in inequality. Therefore, a rightful action and approach are needed to maintain peace, harmony, and security, these efforts will help the state to achieve the development of sustainable peace.

¹³ India Today, world day against child labour, available at <https://www.indiatoday.in/education-today/gk-current-affairs/story/world-day-against-child-labour-india-global-statistics-1547177-2019-06-12>, last visited- 04.06.2021

¹⁴ Vignesh Radhakrishna, Samta Sen & Harsh Singh Aravelu, The Hindu, Data- domestic violence complaints at a 10 years high during covid-19 lockdown, available at- <https://www.thehindu.com/data/data-domestic-violence-complaints-at-a-10-year-high-during-covid-19-lockdown/article31885001.ece>, last visited- 05.06.2021.

If a nation fails to adhere to international human rights standards and norms, it weakens the administration of human rights in that particular nation. Too strong the administration of human rights, a nation has to sustain both peace and development by adopting various forms of human rights internationally as well as nationally. It will reduce inequality and decrease the threat of human right violation. The following are some important points that help in the prevention of human rights violation-

1. The most important step to prevent violation of human rights is to educate people about their rights. The education about human rights must be a part of education, it will increase their knowledge and will decrease the chances of getting affected by the violation and will safeguard the rights of humans.
2. Organizing discussion panel which is known as dialogue groups should be organized by every state, so that people can discuss, express, and share their feelings related to any violation of their human rights and overcome by mistrust, fear, and grief in society. It will also enhance the awareness and knowledge of kinds of violations in society.
3. An efficient administrative authority should set up to monitor human rights violations, which will pay attention to the public and provide training to implement international laws of human rights. This will help to reduce violations and will help to facilitate the participation of a diverse group to protect human rights laws.
4. Reporting should be done by victims, any individual, or group of individuals to support the victim who can't report by himself/ herself. Non- reporting of the violation of human rights gives rise to the offenses related to it.
5. Strategies should be made to maintain the decorum of human rights laws and those strategies should be implemented in a way that will prevent violation and will respond to conflicts consistently. Those strategies should ensure human rights protection, should provide training aims to decrease violations, provide technical advice to the victim, and will encourage peace building activities.
6. Efficiency in justice mechanisms, which means providing justice to the victim who has suffered from violation of human rights. Efficiency in the judicial mechanism will increase accountability for conflict-related violations. Many victims don't report their case due to the poor and corrupted machinery of the judiciary. The justice mechanism should be enhanced in a way so that it can protect the victim and rise the participation of witnesses without any fear.

7. There should be some major shifts (changes) in the society that should protect & expand the civil space, the shift of society should support the prevention of conflict, violence, and security, and the shift should develop the global consistency for human rights and lastly should deliver rights in the context of emerging global concerns. Hence, the adoption of these approaches and shifting society will help the nation to prevent violations of human rights.

Conclusion-

Human rights are the rights of justice and good conscience, we can say that the violation of human rights is increasing day by day but it can be controlled by preventive measures which have been discussed earlier in this article. India, being the world's most populous democracy still has problems in the regulation of human rights law but the government despite making a bundle of laws, first should check how the present law is working in the nation. They should make strategies to tackle prevalent abuses of human rights. India has an independent judiciary, civil society, and free media but on the other hand, there are so many abusive practices, corruption, and lack of accountability for the offender of human rights violation.

The government of India should maintain efficiency to protect the environment and its citizens against infringement of human rights. The violation should be taken more seriously by the government. The biggest threat to human right violation is the violation of women rights, the sexual abuse has become a common crime in the Indian society that violated women rights. At last, the emergence and development of the Indian community will occur only when the country will have a good administrative system and will follow more seriously the international as well as national laws of human rights.