

Empirical study of human right and its influences in India – A Study

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Abstract

Human rights are essential for the overall development of individuals. The Constitution of India makes provisions for basic rights also known as Fundamental Rights for its citizens as well as for aliens. A distinction is made between Specific Fundamental Rights and Unspecified Fundamental Rights. The rights enshrined in the Constitution also at times are at par with the International Covenant on Civil and Political Right (ICPPR) which is an international treaty. The ICCPR is applicable to States rather than to individual. Therefore, rights enshrined therein become the obligation of a state only when they have been incorporated in the State's internal law.

After the Universal Declaration of Human Rights by the UN General Assembly on December 10, 1948, the concept of Human Rights assumed a significance of its own though earlier than this, International Labour Organisation in 1920 also initiated the Conventions on the rights of workers to form unions and organisations, abolition of forced labour and right to collective bargaining.

The authorities used repressive laws to curb freedom of expression and silence critics. Human rights defenders and organizations continued to face harassment and intimidation, and vigilante cow protection groups carried out several attacks. Thousands protested against discrimination and violence faced by Dalit communities. Millions of people opposed changes to labour laws. Marginalized communities continued to be frequently ignored in the government's push for faster economic growth. Tensions between India and Pakistan intensified following an attack by gunmen on an army base in Uri, Jammu and Kashmir. Jammu and Kashmir state witnessed months of curfew and a range of human rights violations by authorities. A ban on India's largest currency bills, intended as a crackdown on the country's black market, severely affected the livelihoods of millions. The UN Charter in 1945 affirmed faith in the fundamental human rights and appointed a Commission on Human Rights under Mrs. E. Roosevelt. This declaration was the outcome of the latter's deliberations A.A. Said aptly remarked The concept of Human Rights may be difficult to define but impossible to ignore. The Human Rights are concerned with the dignity of the individual—the level of self esteem that secures personal identity and promotes human community. As defined by OHCHR: Human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Through this paper author studies the positive implications of human rights in India

Keywords— human rights, India, women, Social, economic, democracy, empowerment

Introduction

We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible. Universal human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. Origin and Development of Human Rights in India The Buddhist doctrine of non-violence in deed and thought says Nagendra Singh, is a humanitarian doctrine par excellence, dating back to the third century B.c. - Jainism too contained similar doctrines. According to the Gita, he who has no ill will to any being, who is friendly and compassionate, who is free from egoism and self sense and who is even-minded in pain and pleasure and patient is dear to God. It also says that divinity in humans is represented by the virtues of non-violence, truth, freedom from anger, renunciation, aversion to fault-finding, compassion to living being, freedom from covetousness, gentleness, modesty and steadiness- the qualities that a good human being ought to have. The historical account of ancient Bharat proves beyond doubt that human rights were as much manifest in the ancient Hindu and Islamic civilizations as in the European Christian civilizations. Ashoka, the prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.

Human Rights in British India The modern version of human rights jurisprudence may be said to have taken birth in India at the time of the British rule. When the British ruled India, resistance to foreign rule manifested itself in the form of demand for fundamental freedoms and the civil and political rights of the people, Indians were humiliated and discriminated against by the Britishers. The freedom movement and the harsh repressive measures of the British rulers encouraged the fight for civil liberties and fundamental freedoms. Under the British rule, human rights and democracy were suspect and socialism was an anathema. In the Indian cultural history, the British colonial period remains the Indian equivalent of the Dark Ages. Lord Macaulay rejected the ancient Indian legal political system as dotages of Brahmanical superstition, and condemned ancient legal heritage and its inner core as an immense apparatus of cruel absurdities. Lord Wellesley condemned the Indians as vulgar, ignorant, rude and stupid and Lord Cornwallis described as an axiom that every native of Hindustan is corrupt. The English East India Company debarred Indians from high offices and deprived them of their political, social and economic rights. The impression created in the Indian minds was that their sacred inalienable human rights and vital interests had been ignored, denied, and trampled upon for the sake of England and the English rulers. Mahatma Gandhi organised the people of India under his leadership and launched his non-violent struggle to achieve self-government and fundamental rights for themselves. Lokmanya Tilak advocated that freedom was the birth right of Indians for which they will have to fight. It was because of the stiff opposition from the people of India that the Charter Act of 1813 was enacted to promote the interest and happiness of the native inhabitants of India. Similarly, the Government of India Act, 1833 was passed to allow the Indians to enjoy some political rights. The proclamation of Queen Victoria on 1 November 1858 contained some principles of state policy, which were similar to fundamental rights in nature.

The concrete demand for fundamental rights came logically in the wake of the nationalist movement, which coincided with the birth of the Indian National Congress in 1885. The Constitution of India Bill 1895 known as the Home Rule Document prepared by the Indian National Congress paved the way for a constitution guaranteeing everyone of the citizens the basic human rights like freedom of expression, inviolability of one's own house, right to property and equality before law. The Government of India Act, 1915, in pursuance of the demands for fundamental rights, guaranteed equality of opportunity in public services. A series of resolutions adopted by the National Congress between 1917 and 1919 repeated the demand for civil rights and equality of status with the English. Human Rights and The Indian Constitution The Constitution of the Republic of India which came into force on 26th January 1950 with 395 Articles and 8 Schedules, is one of the most elaborate fundamental laws ever adopted. The Preamble to the Constitution declares India to be a Sovereign, Socialist, Secular and Democratic Republic. The term democratic denotes that the Government gets its authority from the will of the people. It gives a feeling that they all are equal irrespective of the race, religion, language, sex and culture. The Preamble to the Constitution pledges justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to aid its citizens. India was a signatory to the Universal Declaration of Human Rights. A number of fundamental rights guaranteed to the individuals in Part III of the Indian Constitution are similar to the provisions of the Universal Declaration of Human Rights.

Objective:

The present paper intends to study the human rights rights in Indian context and its contribution to the development of economic and political growth

Human rights and Minorities : enquiry

Armed groups in central India, northeastern states and Jammu and Kashmir committed a range of human rights abuses. The Communist Party of India (Maoist) armed group was suspected of extortion, abductions and unlawful killings, including of local government officials and suspected police "informers", in states such as Chhattisgarh, Jharkhand, Odisha, Maharashtra, Bihar and Andhra Pradesh. The group was reported to have used a lottery system to conscript children in Jharkhand. It also targeted mobile towers and vehicles used in road construction and mining. Armed groups in northeastern states including Assam, Manipur and Meghalaya were accused of extortion, abduction and unlawful killings. In August, 14 people were killed in an attack allegedly carried out by the National Democratic Front of Bodoland (Songbijit faction) armed group in Kokrajhar, Assam. Armed groups were also suspected of killing people in Jammu and Kashmir. In January, suspected members of the Jaish-E-Mohammed armed group attacked an air force base in Pathankot, Punjab state, killing one civilian and seven security force personnel.

Caste-based discrimination and violence

Dalits and Adivasis continued to face widespread abuses. According to official statistics released in August, more than 45,000 crimes against members of Scheduled Castes and almost 11,000 crimes against Scheduled Tribes were reported in 2015. Dalits in several states were denied entry into public and social spaces, and faced discrimination in accessing public services. In January, the suicide of Dalit student Rohith Vemula led to nationwide protests and debates on the discrimination and violence faced by Dalits in universities. In March, the police arrested students and faculty peacefully protesting at the University of Hyderabad, where Rohith Vemula had studied. In July, widespread protests broke out in Una, Gujarat state, following the public flogging of four Dalit men by a vigilante cow protection group for skinning a dead cow – a traditional occupation for certain Dalits. In April, the central government passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Rules, which specified relief mechanisms available to victims of caste-based violence.

Children's rights

According to statistics released in August, reports of crimes against children in 2015 rose by 5% compared with the previous year. Under new laws that came into force in January, juvenile justice authorities ordered that children aged 16 to 18 be treated as adults in cases of serious crimes. In June, a juvenile justice board ordered that a 17-year-old in Delhi be tried as an adult in an alleged hit-and-run driving case. In August, another 17-year-old in Delhi was ordered to be prosecuted as an adult in a case of alleged rape. In July, Parliament amended a child labour law to prohibit the employment of children under 14, but made an exception for children working in family enterprises. The amendments also allowed children aged 14 to 18 to work in occupations that were not “hazardous”. Many child rights activists opposed the amendments, which they said would encourage child labour and disproportionately affect children from marginalized groups and girls. In August, the central government released a draft national education policy, which made no mention of human rights education.

Communal and ethnic violence

Vigilante cow protection groups harassed and attacked people in states including Gujarat, Haryana, Madhya Pradesh and Karnataka in the name of upholding laws prohibiting the killing of cows.

In March, the bodies of two Muslim cattle traders were found hanging from a tree in Jharkhand. In June, members of a cow protection group in Haryana forced two Muslim men, who they suspected were beef transporters, to eat cow dung. In August, a woman in Haryana said that she and her 14-year-old cousin were gang-raped by men who accused them of eating beef. In May, the High Court of Bombay, hearing a case on a beef ban law, ruled that preventing people from

consuming a particular type of food could violate their right to privacy. A team formed to reinvestigate closed cases related to the 1984 Sikh massacre identified 77 cases for further investigation and invited people to testify. The functioning of the team continued to lack transparency. Black people faced racist harassment, discrimination and violence in various cities. In February, a Tanzanian woman was stripped and beaten by a mob in Bengaluru, Karnataka state. In May, a man from the Democratic Republic of the Congo was beaten to death by a group of men in New Delhi.

Corporate accountability

In February, the Ministry of Environment approved the expansion of a coal mine in Kusbunda, Chhattisgarh state, operated by the state-owned company South Eastern Coalfields, despite authorities not having obtained the free, prior and informed consent of affected Adivasi communities. The central government continued to acquire land using the Coal Bearing Areas Act, which allows for the acquisition of Adivasi land without consent. In April, the Gujarat government amended a central land acquisition law to exempt a range of projects from seeking the consent of affected families and conducting social impact assessments. The same month, the UN Special Rapporteur on adequate housing stated that most forced evictions occurred with impunity in India. In May, the Supreme Court rejected a petition challenging the decision of 12 village assemblies in 2013 to refuse permission for a bauxite mine operated by a subsidiary of Vedanta Resources and a state-owned company. In July, the US-based Dow Chemical Company and its subsidiary Union Carbide Corporation failed, for the fourth time, to appear before a Bhopal court to face criminal charges related to the 1984 gas leak disaster. In Jharkhand, police shot dead three men demonstrating against a power plant in August, and four villagers were killed by the police following a protest against a state-owned coal mine in October.

Extrajudicial executions

In April, a former Manipur state policeman told journalists that he had been involved in more than 100 extrajudicial executions in the state between 2002 and 2009. In July, the Supreme Court, hearing a case related to over 1,500 extrajudicial executions in Manipur, ruled that armed forces personnel should not enjoy “blanket immunity” from trials in civilian courts, and that the allegations needed to be looked into. In April, a Central Bureau of Investigation court convicted 47 police personnel of extrajudicially executing 10 men in Pilibhit, Uttar Pradesh, in 1991. Security forces were accused of carrying out several extrajudicial executions in Chhattisgarh through the year. In February, an Adivasi man was killed by Chhattisgarh police in Bastar, Chhattisgarh, in an alleged extrajudicial execution. The same month, an Adivasi man was killed in an alleged extrajudicial execution in Rayagada, Odisha. In both cases, the police claimed that the victims were Maoists. In July, five people, including an infant, were shot dead by security forces in Kandhamal, Odisha. The security forces claimed that the deaths had occurred during crossfire in an encounter with Maoist groups.

In November, eight pre-trial detainees were shot dead by the Madhya Pradesh police near Bhopal after they escaped from prison.

Freedom of association

The central authorities continued to use the Foreign Contribution (Regulation) Act (FCRA) – which restricts civil society organizations from receiving foreign funding – to harass NGOs. The authorities suspended the FCRA registration of Lawyers Collective in June and cancelled it in December. In October the government refused to renew the FCRA licences of 25 NGOs without offering valid reasons. In December, it cancelled the licences of seven other NGOs, including Greenpeace India, Navsarjan, Anhad, and two NGOs run by human rights defenders Teesta Setalvad and Javed Anand. Media reports quoted government sources as saying that the NGOs had acted against “national interest”. In April, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association said that the FCRA restrictions were not in conformity with international law, principles and standards. In June, the UN Special Rapporteurs on human rights defenders, freedom of expression, and freedom of association called on the Indian government to repeal the FCRA.

Freedom of expression

Regressive laws continued to be used to persecute people who legitimately exercised their right to freedom of expression. In February, three students at the Jawaharlal Nehru University were arrested by police in Delhi for sedition after they allegedly raised “anti-national” slogans. The same month, Delhi police also arrested an academic for sedition for allegedly raising “anti-India” slogans at a closed-door event. The sedition law was also used to arrest people for writing “anti-national” Facebook posts in Kerala, for printing a map in Madhya Pradesh which did not show all of Kashmir within Indian borders, and for organizing a protest for better working conditions for police personnel in Karnataka.

In August, police in Karnataka registered a sedition case against unnamed representatives of Amnesty International India for allegedly conducting an “anti-national” event on human rights violations in Jammu and Kashmir. A complaint of sedition was filed the same month in a Karnataka court against an actress for refuting a statement by a central government minister that “visiting Pakistan was like going to hell”. India’s information technology law was used to persecute people. In March, two men were arrested in Madhya Pradesh for allegedly sharing a satirical image of a Hindu nationalist group.

Human rights defenders

Journalists, lawyers and human rights defenders were harassed and attacked with impunity.

In February, journalist Karun Mishra was shot dead by gunmen in Sultanpur, Uttar Pradesh. The state police said he had been targeted for his reports on illegal soil mining. In May, Rajdeo Ranjan, a journalist in Siwan, Bihar, who had faced threats from political leaders for his writing, was shot dead. In February, journalist Malini Subramaniam was forced to leave Bastar following an attack on her home and pressure from police on her landlord. Another journalist, Prabhat Singh, was arrested for sharing a message online that mocked a senior police official in Bastar. Bela Bhatia, a researcher and activist, faced intimidation and harassment from vigilante groups in Bastar. Adivasi activist Soni Sori had a chemical substance thrown at her face by unidentified assailants. A group of human rights lawyers who provided free legal aid to Adivasi pre-trial detainees were also forced to leave their home in Jagdalpur, Chhattisgarh state, following police pressure on their landlord.

Journalist Santosh Yadav, who was arrested in 2015 on politically motivated charges, remained in detention at the end of the year.

In June, police in Tamil Nadu state arrested Dalit author Durai Guna and activist Boopathy Karthikeyan on false charges of assault. In July, the police arrested environmental activists Eesan Karthik, Muthu Selvan and Piyush Sethia for protesting against the construction of a railway bridge.

Irom Sharmila ended her 16-year hunger strike in protest against the Armed Forces (Special Powers) Act in August. She was released from detention and a local court dismissed charges of attempted suicide against her. Irom Sharmila was a prisoner of conscience.

In October, members of the police and security forces in Chhattisgarh burned effigies of human rights defenders, after some officers were charged with attacking and burning Adivasi homes in Tadmetla, Chhattisgarh in 2011.

Jammu and Kashmir

The killing of a leader of the Hizbul Mujahideen armed group in July sparked widespread protests. More than 80 people, mostly protesters, were killed in clashes and thousands injured. At least 14 people were killed and hundreds blinded by security forces' use of pellet-firing shotguns, which are inherently inaccurate and indiscriminate. Security forces used arbitrary or excessive force against demonstrators on several occasions. In August, Shabir Ahmad Monga, a lecturer, was beaten to death by army soldiers.

The Jammu and Kashmir government imposed a curfew which lasted over two months. Private landline, mobile and internet service providers suspended their services for weeks on orders from state authorities. The communications

shutdown undermined a range of human rights. Residents reported being unable to reach medical assistance in cases of emergencies.

In July, the state government prevented the publication of local newspapers in Kashmir for three days. In September, Khurram Parvez, a Kashmiri human rights defender, was arrested and detained for over two months on spurious grounds, a day after he was prevented from travelling to a UN Human Rights Council session in Geneva, Switzerland. In October, the government ordered a Srinagar-based newspaper to cease printing and publication on vague grounds. Hundreds of people, including children, were placed in administrative detention. Dozens of schools were set on fire by unidentified people.

Rights of lesbian, gay, bisexual, transgender and intersex people

In February, the Supreme Court referred to a larger bench a petition challenging Section 377 of the Indian Penal Code, which criminalizes consensual same-sex relations. In June, five people who identified themselves as members of the LGBTI community filed another petition in the Supreme Court asking for Section 377 to be struck down. In July, the cabinet approved a flawed bill on transgender people's rights. Activists criticized the bill for its problematic definition of transgender people, and for its provisions on anti-discrimination which were not aligned with a 2014 Supreme Court judgment.

Violence against women and girls

Reported crimes against women and girls continued to rise. According to statistics released in August, over 327,000 crimes against women were registered in 2015. Women from marginalized communities continued to face systemic discrimination, making it harder for them to report sexual or other forms of violence. In January, two groups of Adivasi women reported that they were raped and sexually assaulted by security force personnel during search operations in their villages in Chhattisgarh. Little progress was made in both investigations. In April, women garment workers protesting in Bengaluru, Karnataka, faced arbitrary and abusive actions by police. In May, a Dalit law student from Kerala was found raped and murdered at her home. The police had failed to investigate previous complaints of caste-based discrimination by the family. In July, the government released a flawed draft law on trafficking without adequate consultation. Indian law continued to criminalize soliciting in public places, leaving sex workers vulnerable to a range of human rights abuses.

Conclusion

Article 14 of the Indian Constitution proclaims the general right of all persons to equality before the law, while Article 15 prohibits the State from discriminating against any citizen on grounds 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 abolishes 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 advancement. Article 18 abolishes all non-military or non-academic titles. The right to freedom guaranteed to all citizens under Article 19 encompasses the right to freedom of speech and expression, the right to assemble peaceably 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 autre fois 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 was added to the Constitution by the Eighty Sixth Constitutional Amendment Act 2002. 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).

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