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A STUDY OF LEGISLATIVE AND CONSTITUTIONAL PROVISIONS OF HUMAN RIGHTS IN INDIA

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ABSTRACT

Human rights in general and crime victims' rights in particular are at the heart of this research. The research relies heavily on the legal judgments of the Supreme Court of India and Various High Courts from 1950 to 2014. Too much time has passed from 1950 to 2014 for it to be covered in depth and detail in a single dissertation. The 1980s was a watershed moment as the Indian Judiciary embraced judicial activism. Therefore, although the years 1980–2014 get more (analytical) focus, the years 1950–1979 will serve as a foundation and be offered for restricted study. India's courts have been more lenient in their protection of citizens' rights to liberty in recent years. The judiciary has been more committed to enforcing human rights laws and providing everyone with Constitutional protection. The judiciary has been very vigilant in ensuring that the Constitution's mandates are carried out and that the state provides a fair and compassionate environment for its citizens. One indicator of a state's level of civilisation is how well its legal system upholds and protects citizens' human rights. Protection of the accused's and victim's human rights is also an essential factor to consider. The purpose of this research is to look at judicial activism in human rights from an Indian viewpoint, specifically looking at compensation for victims of gender-based violence. The judiciary has been more active in its approach to matters involving the defense of human rights. The Indian Judiciary has relied on the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and other allied instruments in its decisions on a wide range of human rights cases. When the executive and legislative branches sat on their hands and did nothing to advance human rights, the judiciary stepped up to the plate. The judiciary has shown to be especially concerned with safeguarding civil liberties. In a number of decisions, the Supreme Court of India and lower courts have affirmed, emphasized, and enforced human rights.

KEYWORDS: - Legislative and Constitutional, Human Rights, India, Political Rights, Indian Judiciary.

INTRODUCTION

Unfortunately, the victim of crime is often overlooked by the criminal justice system. There has never been any attention paid to the victim, who is the direct result of the act. Victims had little to no standing in the criminal justice system at the turn of the

twentieth century. They definitely helped the Police by providing information, but reimbursement was scarce under the law. After existing in virtual obscurity for decades, the victim of crime is today recognized as a legitimate subject of interest in most countries. It is only very

recently that scholars and governments have begun to focus on how to best help crime victims.

The victim of crime was not studied in criminology until after World War II ended. Despite having its roots in the groundbreaking work of Benjamin Mendolson, Hans Von Hentig, and Stephen Schafer in the 1940s, Victimology was, until very recently, relegated to the margins of criminological study. Recent years have seen an increase in discussion surrounding the victim, the "poor relation" of criminal law, and the subsequent crystallization of professional and public opinion in favor of resolving the plight of this modern-day "Cinderella" of the criminal trial in India. There have been two major ways in which the Indian legal system has failed to safeguard victims' rights: by not enacting appropriate legislation, and by failing to enforce the word and spirit of those laws that have been enacted.

This study aims to illustrate the many dimensions of victims, from their responsibilities and obstacles to the legislative and judicial responses that have been made to the concept of improving victim outcomes. In the current criminal justice system, the victim is a major loser. As a result, this research looks at how victims function and how their rights as human beings are protected. Human rights are the seedbed for victimization and criminal activity. Human rights violations should have consequences. This calls for an examination of human rights law from an international as well as an Indian viewpoint. The research makes some rudimentary attempts to understand how different judicial systems in Asia, Europe,

and the United States treat victims and how it affects a growing victim rights movement.

All victims of crimes and abuses of human rights (regardless of their legal standing) are entitled to restitution for the harm they have suffered. Damages, both monetary (for things like lost income and medical bills) and intangible (for things like pain, suffering, and trauma), may be sought and awarded via criminal, civil, and administrative proceedings. Given the inadequacy of traditional judicial remedies in cases involving violations of fundamental rights, the present study focuses primarily on victims of human rights violations, i.e., when the court shapes the relief by granting compensation in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights. The State often violates these rights, but private parties may also play a role.

The main focus of this research is on the activity of the Indian judiciary in protecting human rights, with a focus on victims. According to a study of Indian judicial rulings on human rights protection, the court has been stepping in to help when the victims' issues cannot be resolved by the government and the legislative. Thankfully, India's judicial system is rather proactive.

The court has stepped up with remedial actions and has provided the government and legislature with required directives. While acknowledging the judiciary's role, it's important to keep in mind that the court's rulings cannot cover up the ineptitude and slackness of the administration and legislative. Therefore, the State and all its agencies have an

absolute obligation to ensure that victims get justice.

Criminal injury compensation and compensation orders just scratch the surface, helping a small number of victims but not solving their underlying issues. They do not promise or offer justice in any meaningful way, instead providing insufficient financial remedies to the victim's concerns. As a result, a Welfare State requires a system of State reparation payment for victims of crime. To address the needs of victims, the government should launch a comprehensive victim support program.

In order to provide victims of crime with fair and effective restitution, as mandated by the Indian Constitution, victim compensation programs are necessary in India. Paying victims for their losses and satisfying their need for revenge is a new frontier in civil justice. While the effectiveness of a penalty as a deterrent may be up to debate, its uniqueness cannot be denied. The novel idea of victimology is an important first step in making good on the Constitution's solemn pledges. Restorative justice requires a shift in perspective from punishment to reparation. Since the existing legislation seems insufficient and piecemeal, justice appears unlikely. Perhaps giving the judges a larger role is the key. Although there are not many statutory protections for victims in Indian criminal law, the court has worked to broaden the protections that do exist. There is currently no mechanism in place to compel the State to compensate the victim where the loss is substantial and the criminal is unable to pay the same. In addition, there is no provision for financial compensation while the case is pending.

The Protection of Human Rights Act of 1993 paved the path for the expansion of human rights jurisprudence. Human Rights Courts at the district level and Human Rights Commissions at the state and national levels have been seen as necessary with the emergence of new social realities. The primary idea behind the Protection of Human Rights Act, 1993 is that all people deserve a life in which their intrinsic worth as human beings is recognized and safeguarded. As an example of institutionalizing human rights beyond the principles of basic rights as contained in the Indian Constitution, one might look to the 1993 Human Rights Act, which led to the creation of the National Human Rights Commission of India.

STATUS OF THE VICTIM IN THE INDIAN CRIMINAL JUSTICE SYSTEM

When it comes to the law, where do crime victims stand? Victim is left to defend himself with little to no help from State apparatus while the accused is shielded with all available resources at the expense of the State.

Four statutes—(i) the Constitution of India, (ii) the Indian Penal Code, (iii) the Code of Criminal Procedural Law of India, and (iv) the Indian Evidence Act—form the basis for the criminal justice system in India. A victim or complainant of a crime may only testify as a witness for the prosecution under the current system. While the accused has various protections under the law, the victim has none in a criminal trial. In the face of injustice, victims often remain mute, but they may resort to extreme measures to exact their vengeance.

The State should pay for a victim's compensation, rehabilitation, and repairs regardless of whether or not the perpetrator is identified and brought to justice, as is recognized by the current victimology approach.

The foundation of India's criminal justice system was laid by the British. Following the common law colonial heritage, victims in India's criminal justice system have no other function than that of a witness in the prosecution of an offense. This originates from the preconceived notion that a victim of crime is someone who has been unfairly treated because of the pain they have endured as a result of the criminal act. As a result, the State assumes responsibility for prosecuting the perpetrator to the exclusion of the victim, giving the criminal justice system a vertical component and transforming it into a formal method of social control. This vertical Criminal justice system can be easily replaced by a more neutral, the horizontal line of justice in which the punishment system is sought to be substituted by a mediation system that gives the victim a central role in the conflict, dispute, protagonist, etc.

JUDICIAL ACTIVISM AND HUMAN RIGHTS

As an independent judiciary, under the scheme of the Constitution, the Court has played its role effectively in acting as a watchdog through judicial reviews over the acts of the legislature and executive," the author writes. The Supreme Court's most important contribution has been to ensure the Constitution is followed by clarifying the separation of powers among the three branches of government. The court cannot sit on the side-lines while two other branches of government fail to do

their jobs. Despite charges of Judicial Activism, the Supreme Court has always risen to the occasion when upholding the Constitution within the confines of the law. The court system has also engaged in judicial law-making, most notably and uniquely on a small number of occasions during the process of Constitution making. When it comes to key problems, the Indian court has not only affected but even steered the country's policy agenda. As a result, it has earned a reputation as an authoritative body committed to constitutional government and the protection of individual freedoms and human rights."

THE INDIAN PERSPECTIVE OF HUMAN RIGHTS

Despite being known as the world's greatest democracy, India has a murky history when it comes to human rights. According to a worldwide trend, human rights have become more important in Indian society in recent years. The 1993 Protection of Human Rights Act has given the path for the growth of human rights jurisprudence a fresh lease of life. It has been deemed necessary for human rights commissioners at the state and federal levels, as well as district human rights courts, to adapt to the ever-changing social landscape. The fundamental principle behind the Protection of Human Rights Act, 1993 is the human desire for a life that upholds and defends the inherent dignity of every individual. One example of "institutionalizing the concept of the human rights in addition to the provisions of fundamental rights as enshrined in the Indian Constitution" is the creation of the National Human Rights Commission of India in 1993, as authorized by the Human

Rights Act of 1993. Since its founding, the National Human Rights Commission has made significant contributions to the formulation of national policy, the creation of norms and rules, the execution of human rights in India, and their assessment.

Determining human rights is never a simple task. The nature of human rights and the steady shift in public opinion over time may make a full description of these rights unattainable. An honest effort has been made to define human rights in India under the Protection of Human Rights Act, 1993. Human rights are defined under the Act as any individual's rights to life, liberty, equality, and dignity that are upheld by Indian courts, as well as those provided by the Constitution or international covenants.

In view of this approach, human rights in India refer to:

- Rights relating to life;
- Rights relating to liberty;
- Rights relating to equality; and
- Rights relating to dignity of the individual,

guaranteed by the Indian Constitution or represented in foreign agreements and upheld by Indian courts.

Human rights legislation is generally recognised as a means of enabling individuals to enhance their quality of life in India, with special reference to the Protection of Human Rights Act, 1993 (as modified by the Protection of Human Rights (Amendment) Act, 2006 No.43 of 2006).

Indian conceptions of human rights have their roots in ancient Indian culture and civilisation rather than in the a priori or natural rights notion of the west. The

Indian conception of rights places equal emphasis on the individual and the local person, each of whom has interdependent rights and obligations that are dictated by their place in a hierarchical web of relationships. The vision and application of human rights in India were significantly influenced by the influence of the Islamic faith, the renaissance and reform movements, British colonialism, and the national ideology.

Very little literature exists on the concept of human rights in the context of India. It would be incorrect to assume, nonetheless, that the concept of freedom originated primarily in the West given the wealth of literature on human rights that the west has produced. In western countries, individual freedom was gained by a protracted and cruel battle that frequently resulted in significant violence against the state and church; in India, however, these liberties were considered to be the fundamental essence of human life.

MILESTONES IN THE EVOLUTION OF HUMAN RIGHTS IN INDIA

In the era of Chandra Gupta Maurya, Kautilya established certain principles of the law of punishment in his Arthashastra, which portrayed political, social, and economic codes of conduct. These principles served as the cornerstone for the legal framework that prohibited unlawful arrests and detention, custodial deaths, mistreatment of women (including rape), gender inequality, corrupt judicial systems, and other forms of mistreatment. Following Kautilya's reign, Ashoka, the king of Mauritia, sowed the seeds of a humanitarian society that bears some similarities to the welfare state model in the west, emphasizing the law of piety.

The idea of civil freedoms is quite similar to Ashoka's doctrine of tolerance. He opposed the cruel treatment of captives and wished for every living thing to be free from fear, oppression, anxiety, and misery. Following the Muslim invasion in the tenth century A.D., Islam provided the drive for universalism, humanism, and religious tolerance—the three fundamental tenets of the ancient Indian tradition—during the medieval era. Human rights in Islam, like in other religions, are centered on the individual's dignity, or the degree of self-worth that preserves one's individuality and fosters community. Islam also created a social structure that was intended to expand human freedom, justice, and opportunity while monitoring the general social, political, and economic advancement of the community.

Even though the Moghal government was essentially a centralized tyranny, its legal system had all the fundamental components of contemporary theory on due process of law, fair trials, and an independent judiciary. For example, secularism and Akbar's high concern for justice and rights might be mentioned. Akbar attempted to spread the concepts of secularism (respect for all faiths) and religious tolerance in this Din-e-Ilahi (divine religion) reform program. Similar to this, the religious movements of Islam and Hinduism, known as Sufi and Bhakti, respectively, made significant contributions to the abolition of the religious customs of the then-modern society. These organizations condemned the extreme sectarianism that pervaded both the Hindu and Islamic faiths and promoted the age-old, holy ideals of humanism and universalism.

British monarchs also made efforts in the modern period by implementing policies such as the introduction of English education, a merit-based recruiting system, a system of discriminatory representation, and eventually, community representation. Nonetheless, a Renaissance and Reformation movement was initiated by several Indian leaders who were impacted by English education. Raja Ram Mohan Roy, for instance, started a campaign for female education and widow remarriage and called for the end of the caste system, sati system, and female infanticide. The focus shifted back to the human person rather than God throughout the Renaissance and Reformist movements, ushering in a new era of human reason and dignity. Additionally, the founding of Arya Samaj and Brahmo Samaj further advances the cause of this novel strategy.

The creation of the Indian National Congress in 1885 opened up new avenues for the cause of human rights during India's political independence movement, since these rights were being infringed upon by British control using the well-known divide and conquer strategy.

Influenced by international freedom movements, the Nehru report (1928) and the Karachi resolution (1930) formulated significant commitments to individual and collective rights that found their way into the Indian Constitution as Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV), respectively.

CONCLUSION

India has various obstacles in the process of victimization prevention and victim protection, but they are being met with some constructive solutions. When the executive branch is weak, the judicial

branch thrives. The contemporary liberal tradition that supports a wide reading of the Constitution that may be applied to particular problems is frequently connected with judicial activism. They argue that the courts must defend existing laws and strike down any legislation that contradicts a higher law, and that many examples of judicial activism are just exemplifying judicial review. They argue that constitutional democracy is about more than simply the majority and that the courts have an obligation to safeguard minority rights and defend the law regardless of the mood of the times. So that the majority cannot oppress any one minority through its electoral powers, activists contend that the judiciary should grant itself a larger role. This would mean giving more authority to a branch of government that is not directly subject to the electorate. In order to fulfil its constitutional mandate to ensure the enforcement of fundamental rights, the Supreme Court developed novel approaches and methodologies, especially in the case of the poor and disadvantaged, who are often denied their fundamental human rights and for whom freedom and liberty have no value. It is well known that judicial activism has resulted in several excellent case laws for the country/society. The Supreme Court's decisions have had a major impact on environmental protection, human rights, gender equality, educational equity, minority protection, police reform, electoral processes, and the scope of Parliament's ability to change the Constitution. The people of India look to the Supreme Court as a protector of the Constitution's lofty principles and a tool

for achieving social justice. Judicial activism requires a fine balance of innovation and nuance. Innovation calls for a high level of expertise and agility. Judiciary innovation is required for the Rule of Law to be put into effect whenever there is a gap in the law or when other functionaries fail to act. Any deviation from the norm shall serve simply to push the relevant public bodies to fulfil their legal obligations and speed up the process, not to replace them. In a democratic constitutional scheme, this falls squarely within the purview of the court. To mitigate the consequences of a minority of elected executive officials, a robust judiciary may serve as a check on their power. Since special interests cannot impose their version of Constitutional interpretation through the threat of discontinuing political contributions, an independent court is a huge value to civil society.

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