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Paper Authors:

SUJIT KUMAR MISHRA, DR. RAM SWAROOP GUPTA



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A REVIEW OF LAW RELATING TO PROTECTION OF HUMAN RIGHTS ENFORCEMENT SYSTEM IN INDIA

SUJIT KUMAR MISHRA

Research Scholar, Sunrise University, Alwar, Rajasthan

DR. RAM SWAROOP GUPTA

Research Supervisor, Sunrise University, Alwar, Rajasthan

ABSTRACT

The concept of human rights is absolutely worthless or meaningless without its enforcement system or implementation in pursuance, furtherance, compliance and respect of Rule of Law in “sovereign, socialist, secular, democratic & republic India”, subjecting to equity, justice, good faith, good conscience and morality. In spite of existence of enforcement system, human rights are not being implemented in accordance with time, requirements, necessities and circumstances as required. Now a days it is found very commonly that people or masses are being deprived from their life & personal liberty openly and broad day light. The human right of life, personal liberty & security is in aforesaid condition which is parents of all human rights hence now nothing can be said about other human rights or guaranteed fundamental rights. The same is the consequences or effects of the enforcement system or implementation of human rights. The condition & implementation of human rights are the worst and extremely miserable but it also cannot be denied that the human rights are having its own specific place, importance and significance in India. All the human rights & its law are implemented by medium of its enforcement system under Rule of law, subjecting to all justified exceptions and in the light of principle of natural justice but in present scenario, the enforcement system is not being or being able to function, process, enforce or implement or do the needful which is as required as per necessities, legitimate expectations or requirements according to time & circumstances for the protection, betterment, preservation, development, promotion, respect, accessibility of people or masses upto Enforcement System and other things connected also of human rights & its law hence keeping in aforesaid special views this research paper has been emphasized or focused on the implementation of Law Relating to Human Rights with Special Reference to Enforcement System in India, appraising critically which is useful & helpful for research scholars, students, Professors, teachers, institutions or organizations or establishments, commissions, governments, NGOs, trusts, Colleges, Universities, person individually or group, society and other required persons pertaining to conduct research & do the needful in accordance with requirements, time & circumstances.

KEYWORDS: human rights, sovereign, socialist, secular, democratic & republic 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 names⁴, 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 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.

HUMAN RIGHTS IN INDIA

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. 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.

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. 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 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 India²¹ 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 ended 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.

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 Bhartiya²⁷ 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.

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.

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 for STs and the National Commission for Women are given ex-officio membership of the Commission. The functions of the National Human Rights Commission are provided under Section 12, from the perusal of Section Commission performs various functions which are as follow:-

- a) Inquire into the cases of violation of human right suo motu, on petition presented to him or on the direction of the Court.
- b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.

c) Visit into any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and to make recommendations thereon to the Government;

d) Conduct a systematic review of the Government's human rights policy in order to detect shortcomings in human rights observance and to suggest ways of improvement. The National Human Rights Commission has been doing this task by commenting on the draft legislation, drawing the attention of the Government to the lacuna in the existing law and forming a human rights policy for the nation according to the local needs.

e) Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.

ii) State Human Rights Commission

Power to constitute commission at state level is conferred on the state government under Section 21 (1) of the Act. The Commission is composed of chairperson and four other members. The State Commission is empowered to perform similar functions, which have been entrusted to the National Human Rights Commission. State Commission inquiries into violations of human rights only in respect of matters related to any of the entries enumerated in List II and III in the Seventh Schedule of the Constitution. The study of treaties and other international instruments on human rights

have been excluded from the purview of State Human Rights Commission. As regards the mechanism for the redress of human rights grievances in Union Territories, the Minister of Human Affairs had taken the position that the best way of proceeding may be through the extension of the jurisdiction of the State Commissions of neighbouring States into the adjoining Union Territories, as has been done in respect of High Courts.⁴⁹

iii) Human Rights Courts

State government set up these courts with concurrence of the Chief Justice of the High Court, by notification specifying for each district a Court of Session to be a Human Rights Court under Section 30. State Government appoints Special Public Prosecutor to conduct cases in human rights court under Section 31 of the Act. Human Rights Courts have been set up in the States of Assam, Andhra Pradesh, Sikkim, Tamil Nadu and Uttar Pradesh.⁵⁰ Commission stays in touch with the concerned High Courts with a view to making clear the precise nature of the offences to be tried in such courts and other details regarding the conduct of their business.⁵¹ The National Human Rights Commission has made an inquiry into thousands of complaints it has submitted reports to the government on various matters wherein it has made a number of recommendations suggesting measures to be taken to curb the human rights violations. In August 2016 it has received 7822 fresh complaints and has disposed of 7772 fresh as well as old cases.⁵²

iv) Role of NGOs

Besides the government there are non-government entities which play an important role in protection of human rights. NGOs are playing remarkable role in the society. These organizations pickups the government's deficits in service and help in protecting rights of the people. NGOs are nonprofit making organizations ranging from small groups to international organizations having branches all over the world. NGO is independent organization of state and managed by group of private individuals and they draw strength from the people who offer voluntary support to their causes. NGOs raise awareness among people about their rights by imparting education and uplifting them. NGOs have key role to play in planning, monitoring and evaluation of the process of the protection of human rights. B.R.P. Bhasker⁵³ points out that "in the field of human rights, the role of NGO is particularly important as Government or their agencies often become violators of the very rights they are committed to protect and promote vast sections of the people who are illiterate and ill-informed, and that makes it easy for rights violators to act with impunity. Against this background human rights education assumes importance and this task is primarily performed by NGOs".

CONCLUSION

In a nut shell, it can be concluded that the enforcement or implementation of human rights & its Law must be ensured with immediate effect to maintain, protect & preserve the law and order, society country & also for the credibility in human towards enforcement system. The conception of

human rights & its law can be succeeded only by enforcement system or implementation human rights & its Law as required according to requirements, time & circumstances. In the light of all the aforesaid things; Many reasons or causes are behind all the same as under: social, economic, political, moral, spiritual, scientific, psychological, technical, cultural, traditional & custom and usage, lack of knowledge, awareness, literacy, accessibility to people, life style, living standard, culture, thoughts, mind, attitude, human abstract, reasoning, logics, curiosity atmosphere, misunderstanding, misinterpretation, misguidance, ill feelings, malafide, misadministration, bureaucracy, illegal unconstitutional autocracy, tyranny, practice of people of India & other connected things therewith. Human rights are basic fundamental rights which are integral part for the development of human being in the absence of which person cannot live life with dignity. Constitution of India protects the fundamental rights or human rights of the people, provisions for the same have been made not only in the Articles of the Constitution but in fact Preamble also talks about the fundamental freedoms and protection of the dignity of the individual. The Indian Judiciary had even relaxed the rule of *locus standi* for the protection of human rights which pave the way for the development of the concept of Public Interest Litigation. Through public interest litigation various incidents of violation of human rights had been put before the Courts. Courts protected the rights of women, workers, children, prisoners and so on. Thus judiciary is playing a role of savior

of the human rights of the people so that each individual can live with dignity.

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