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Dr. Bina Rai
Asst. Professor, Political
Science, R.G. (P.G.) College,
Meerut

Human rights in India: A post-facto assessment of post independent Era

Dr. Bina Rai

Abstract

Many cultures and civilization have developed ideas about the intrinsic worth and dignity of individual human beings. However these theories were traditionally rooted in religious belief, meaning that the moral worth of the individual was grounded in divine authority, human beings usually being seen as creatures of God. The prototype for the modern idea of human rights was developed in early modern Europe in the form of 'natural rights'. But when we look back in Indian history we find our literature have marked worship of nature and human beings from the ancient period. India happens to be one of the few countries in the world having a cheered history of human rights movement.

Keywords: Human Rights, Indian Constitution, National Human Rights Commission, Right to Education, Right to Information, Right to Food.

Introduction

Today human rights has become an important aspect of civic life. Its multi-dimensional nature has made its invocation very popular in national and international politics. Human rights are those rights to which all human beings, per se, are entitled and can lay claims upon in society. Human beings are born equal in dignity and rights. These moral claims are articulated and formulated in what is today known as human rights. Human Rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being. India being a diverse country with its multicultural multiethnic and multireligious population. The phenomenon of human rights is connected not only with the protection of individuals from the excesses of state but also directed towards the creation of Social conditions by state in which individuals may develop to their fullest extent. The term Human Rights refers to those rights are considered universal to humanity, regardless of citizenship, residency status, ethnicity, gender, or other considerations. Human Rights refer to a wide variety of values and capabilities reflecting the diversity of human circumstances and history. They are conceived of as Universal, applying to all human beings everywhere, and as fundamental, referring to essential or basic human needs. Human rights have been classified historically in terms of the notion of three 'generations' of human rights.

A democratic society is one where the government and the citizens come together to create an open society where there is maximum and effective public participation. Citizens must evince an active interest in the formulation of policies and their execution and thus exercise their democratic rights as important stakeholders in the governance process. The stunning point of all contemporary civil society initiatives is the assumption that the State cannot be held solely responsible for governance, development and growth of the nation. The first step in this direction is to secure basic human rights within the framework of the Constitution through legislation and a transparent political process. Civil society movements have largely articulated and agitated for rights safeguard by the Constitution and its consent impingement by the State and its instrumentalities. The citizenry must be conscious and vigilant if human rights are to be 'realized' and the State is to be prevented from encroaching on fundamental rights.

Rights define the position of the individual in a state. They offer a positive purpose to the state. Through them alone, the state promotes the general welfare of the society as a whole. The presence of rights is a proof that the state exists for the individual, not the individual for the state.

Correspondence
Dr. Bina Rai
Asst. Professor, Political
Science, R.G. (P.G.) College,
Meerut

Thus, every cautious individual tries generally to protect his or her rights as they determine the political, social, economic and even individual ways of living and the status of life. Rights, in brief, virtually determine the status of a political civilization achieved by the state. Rights are those condition of social life without which man cannot be at his best or give of his best, or what is needful to the adequate development and expression of his personality. Looked at negatively, rights are those opportunities the absence of which deprives man of something essential. A man without rights, absolutely dependent on the caprice of superior authority, is a slave. All doctrines of freedom, therefore, assume the existence of rights. And, all the status maintain certain rights which enable the individual to develop his personality.

The study of rights occupies a very important place in the discussion of politics and political theory. They are regarded as a bedrock of a democratic system. Their ideological development, their political, social and economic contents and implications, and their legal status in the present day world is of paramount importance to political theorists

Human Rights in Ancient India

The earliest fragments of the human rights, not only in India but probably in the world as such, may arguably be found in the ancient Indian literary sources depicting the norms of the socio-economic and political life of the people in ancient times. It also says that divinity in Human's 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 Indian mind, thousands of years before the dawn of Christian era, could perceive the existence of all living being in PARAMATMAN and visualized Paramatman in all creatures, thus leaving behind no room for hatred towards any one. The Vedic Rishis always prayed for the well-being of everyone in society. These Rishis were first to conceive the whole world as one family. In the above context, it was considered foremost duty of the state or king to protect the citizens or praja. Thus we find that the concept of rights of human beings is neither entirely western nor modern, Rig Veda cites three civil rights -that of Tana (Body), Skridhi (Dwelling place) and Jibhasi (Life). Mahabharata tells about the importance of the freedoms of the individual (civil liberties) in a state. Before second century B.C, Indian states could boast of elected kings.

For instance, the *Vedic* literature eloquently proclaims the equality of all human beings and calls for the fostering of the sense of fraternity amongst them all. Moreover, it reiterates the equal claims of the human beings on the basic life supporting amenities like food, water, air and shelter and professes an egalitarian and fulfilling social order by calling for the ideal of '*Sarve Bhavantu Sukhinah*' across the board. The Buddhist and Jainism too contained similar doctrines of non-violence in deed and thought. An authoritative glimpse of the nature and functions of the human rights in ancient times is also found in the monumental work of Kautilya, the Arthashastra. Rooting his concept of rights and duties in the notion of Dharma, Kautilya reiterated the civil and legal rights as propounded by the law giver of ancient times, the Manu. Moreover, he also insightfully tried to supplement the civil and legal rights of people with the formidable economic rights presumably in order to evolve a comprehensive notion of the human rights of the common people. Unfortunately,

with the growing complexity of life on the one hand, and the degeneration of the moral values of life, on the other, the pious ideals of the *Varna* System started getting perverted into the cruel and inhuman caste system. Subsequently, during the Middle Ages, with the arrival of the Muslim rulers, newer elements seemed to have been introduced in the socio-economic and political life of the country which impacted on the realization of the human rights by the common people adversely. As a result, by the time of the British arrival in India, a vast mass of the people were abjectly deprived of their human rights at the hands of the dominant sections of the people.

Human Rights in British India

The pioneering efforts leading to the eventual germination of the human rights movement in India appeared to have come from the relentless social reformer Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar and Dayanand Saraswati. The movement for independence, led by the Indian National Congress (INC), engaged in a larger struggle for democracy, which was inclusive of greater human rights and civil liberties.

The INC's primary interest was gaining independence from British rule, and it struggle to balance its support for human rights with the need to established stability as a precursor to achieving that independence. However, such an argument has been countered by the scholars on the plea that 'the mainstreaming intellectual and political discourse of the liberation struggle had its central focus around the nation as a community, initially against colonial rule, and later also against contesting groups like Muslims, Sikhs, dalits and tribal as communities claiming nationhood.' The argument further goes to emphasize the point that since the thrust of the nationalist leadership did not have on the concern for the rights of individuals, as against the rights of nation as a community, it might not be justified to label the entire national movement as a movement for the securing of human rights in the country.

Human Rights in Post-Independence Era

The congress government led by Pandit Jawaharlal Nehru guaranteed the citizens of independent India certain inalienable, fundamental rights through Constitution of India. The Constitution of India is one of the longest, most sweeping and most rights-based constitution in the world. It was heavily influenced by the Universal Declaration of Human Rights along with their ancient culture. Evidence of India's historical struggle against the British colonial powers that so consistently abused the rights of the people can also be found in the document. In the post-independence times, despite having one of the most elaborate exhibition of the fundamental human rights of the people, the operationalization of the human rights in the country became quite problematic. India certain inalienable, fundamental rights through the Constitution of India. The Constitution provides protections against such infractions, and includes other principles that informed the battle for independence in particular, social reforms against practices like Sati, Child marriage, and Untouchability. The Constitution also directs the state to set policies for the welfare and relief of the people, thereby encompassing ideas of economic and social rights in addition to civil liberties. The leadership of Mahatma Gandhi saw the capitalization of the 'constructive spirit' within the society. Instead of regarding the people 'as raw material of reform, which in essence meant, at best,

westernization, and at worst, collaborating with the colonial regime, the Gandhian movement focused on reorganizing people's own resources for goals of material and spiritual well-being which they were enabled to set for themselves'.

The Constitution of India

The Constitution of India defines fundamental rights in Part-III that guarantees every citizen with some rights irrespective of race, place of birth, religion, caste, creed or gender. These are the essential rights which a person born along with. Fundamental rights revolutionizes the inequalities existing in pre-independence era. They had put a taboo on untouchability, forbid discrimination on the grounds of religion, race, caste, sex, or place of birth, trading of human beings and forced labor. They also protect cultural and educational rights of ethnic and religious minorities.

The Fundamental Rights are essential for the development of the personality of an individual and to preserve dignity of a human. Any person can move to court if anyone challenges his fundamental right. These Fundamental Rights not only protects individuals from any arbitrary state actions but also prevents violation of human rights. Some Fundamental Rights apply for both the Indian citizen as well as persons of other nationality whereas others are available only to Indian citizens.

The right to life and personal liberty and the right to freedom of religion are available to all people. On the other hand, freedoms of speech and expression and freedom to reside and settle in any part of the country are exclusively meant for citizens. All the provisions of the Constitution, including Fundamental Rights can be amended. Basically every citizen in India enjoys six fundamental rights: Consequently, it encapsulates and guarantees the fundamental principle of human rights. Equally relevant for them, especially, is the prefatory declaration of the Constitution in its Preamble that all citizens of India are to be secured "liberty of thought, expression, belief, faith and worship and "equality of status and of opportunity."

Part III of the Constitution gives certain fundamental rights. Some of these rights are common to all the citizens of India including minorities. These rights are enshrined in -

Article 14: This ensures equality before law and equal protection of law.

Article 15: This prohibits discrimination on any ground i.e. religion, race, caste, sex, place of birth.

Article 19: Right to freedom: Which includes freedom of speech and expression, assembly, association or union or cooperatives, movement, residence, and right to practice any profession or occupation (some of these rights are subject to security of the State, friendly relations with foreign countries, public order, decency or morality), right to life and liberty, protection in respect to conviction in offences and protection against arrest and detention in certain cases.

All citizens shall have the right to freedom of speech and expression: while some countries recognize Right to Information explicitly in their Constitutions, in others the judiciary has interpreted the Right to freedom of speech and expression to include the Right to Information. The Right to Information has not explicitly been recognized in the Indian constitution. However, the Supreme Court of India has

interpreted through various decisions that the right to information is a part of the Right to Freedom of Speech and Expression under Article 19(1) (a) of the Indian Constitution. In addition, the Supreme Court of India has gone on to say that the Right to Know is an integral part of the Right to Life and unless one has the Right to Information the Right to Life cannot be exercised.

Right to Information: The Right to Information Act (RTI) is an Act of the Parliament of India "to provide for setting out the practical regime of right to information for citizens" and replaces the erstwhile Freedom of information Act, 2002. There is one common thread that runs through the above mentioned cases – and that is a lack of access to Information. Restrictions on the free flow of information - especially between government and citizen – has resulted not only in eroding the democratic principles enshrined in the Indian Constitution but has resulted in the failure of government policies and development schemes for bettering the lot of the poor. With the lack of access to information, people are unaware of the developments schemes and are completely unequipped to engage in informed participation in their own development even if given a chance. Therefore, decades of development have been lost through decision making uninformed by the realities of those without a veritable voice. The concept of human development is directly linked to human rights.

Article 21: No person shall be deprived of his life or personal liberty except the procedure established by law.

The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), is an Act of the Parliament of India enacted on 4 August 2009, which describes the modalities of the importance of free and compulsory education for children between 6 and 14 in India under Article 21A of the Indian Constitution. India became one of 135 countries to make education a fundamental right of every child when the act came into force on 1 April 2010. Present Act has its history in the drafting of the Indian constitution at the time of Independence but is more specifically to the Constitutional Amendment of 2002 that included the Article 21A in the Indian constitution making Education a fundamental Right. This amendment, however, specified the need for a legislation to describe the mode of implementation of the same which necessitated the drafting of a separate Education Bill. It is the 86th amendment in the Indian Constitution.

Article 25: Freedom of religion in India is a fundamental right guaranteed by Article 15 and Article 25 of the Constitution of India. Modern India came into existence in 1947 and the Indian constitution's preamble was amended in 1976 to state that India is a secular state. Every citizen of India has a right to practice and promote their religion peacefully. This ensures freedom of conscience and the right freely to profess, practice and propagate religion.

Article 26: This ensures a right to manage religious institutions, religious affairs, subject to public order, morality and health. Article 26 guarantees all religious denominations or any sections, subject to public order, morality and health; to manage their own affairs in matters of religion, religion, set up or manage institutions of their own for charitable or religious purposes, and own, acquire and manage property in

accordance with law. These provisions do not derogate/deviate from the State's power to acquire property belonging to a religious denomination.

Article 29: Gives minorities a right to conserve their language, script or culture. The Cultural and Educational rights, given in Articles 29 and 30, are measures to protect the rights of cultural, linguistic and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination.

Part IV of the Constitution of India, containing non-justifiable Directive Principles of State Policy, includes the following provisions having significant implications for the Minorities:

- 1- Obligation of the State "to endeavor to eliminate inequalities in status, facilities and opportunities" amongst individuals and groups of people residing in different areas or engaged in different vocations;
- 2- Obligation of State to "endeavor to secure for the citizens a uniform civil code throughout the territory of India";
- 3- Obligation of State "to promote with special care" the educational and economic interests of "the weaker sections of the people" (besides Scheduled Castes and Scheduled Tribes; and
- 4- Obligation of State to "take steps" for "prohibiting the slaughter of cows and calves and other mulch and draught cattle".

India provides one of the best examples in the world in terms of the justifiability of the right to food. The Constitution of India prohibits discrimination and recognizes all human rights. The right to life is recognized as a directly justiciable fundamental right (art. 21), while the right to food is defined as a directive principle of State policy (art. 47). As it has interpreted these provisions, the Supreme Court of India has found that the Government has a constitutional obligation to take steps to fight hunger and extreme poverty and to ensure a life with dignity for all individuals."

The Right to Food is enshrined in the constitution, Article 47 (Duty of the State to raise the level of nutrition and the standard of living and to improve public health):

"The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health."

Right to Food Security: On September 3, 2001, the court directed that 16 states and union territories that had not identified families below the poverty line must do so within two weeks, so that those families could be provided with food assistance. After two weeks, on September 17, 2001, the court reprimanded them, saying, "we are not satisfied that any such exercise in the right earnestness has been undertaken." They were then given another three weeks to comply with the order. The court also reminded the states that "certain schemes of the Central Government are mentioned which are required to be implemented by State Governments". These schemes are: Employment Assurance Scheme which may have been replaced by a Sampurna Gramin Yojana, Mid-day Meal Scheme, Integrated Child

Development Scheme, National Benefit Maternity Scheme for BPL pregnant women, and National Old Age Pension Scheme for destitute persons of over 65 years, Annapurna Scheme, Antyodaya Anna Yojana, National Family Benefit Scheme and Public Distribution Scheme for BPL & APL families. The Chief Secretaries of all the States & the Union Territories are hereby directed to report to the Cabinet Secretary, with copy to the learned Attorney General, within three weeks from today with regard to the implementation of all or any of these Schemes with or without any modification and if all or any of the Schemes have not been implemented then the reasons for the same. In 2005, India adopts its Mahatma Gandhi National Rural Employment Guarantee Act and the Right to Information Act. 20th of August to the 2nd of September of this year, the Special Rapporteur on the Right to Food leads a country mission to India.

In 2011, the National Food Security Bill, 2011, popularly known as Right to Food Bill was proposed. In 2013, National Food Security Act, 2013 was passed by the Indian Parliament. The Act guarantees subsidized food to 50% of the urban population and 75% of the rural population. The proposed legislation would provide of rice, wheat and coarse grain at very low prices to "priority households" similar to Below Poverty Line families. Distribution will be through the current Public Distribution System, a government-run ration and fair price shops. Regarding India, the Special Rapporteur has commented.

Article 243T. Reservation of seats for the Scheduled Castes and the Scheduled Tribes and Women in every Municipality such seats may be allotted by rotation to different constituencies in a Municipality.

Article 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People: Seats shall be reserved in the House of the People for the Scheduled Castes, the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam and the Scheduled Tribes in the autonomous districts of Assam.

Article 332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States: Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes, except the Scheduled Tribes in the autonomous districts of Assam, in the Legislative Assembly of every State. Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.

Article 334. Reservation of seats and special representation to cease after [fifty years]

Notwithstanding anything in the foregoing provisions of this Part, the provisions of this Constitution relating to- the reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States, and the representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination, shall cease to have effect on the expiration of a period of [fifty years] from the commencement of this Constitution. Provided that nothing in this article shall affect any representation in the House of the People or in the Legislative Assembly of a State until the dissolution of the then existing House or Assembly, as the case may be.

Article 335. Claims of Scheduled Castes and Scheduled Tribes to services and posts

The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, constantly with the maintenance of the efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

Civil Liberties Movement in 1975 during the Emergency

The 19 months of National Emergency imposed by Indira Gandhi between 1975 and 1977 represent a watershed in the postcolonial history of democratic India. During that period, the civil rights movement developed a wider organizational base and consequently grew more visible. The Emergency gave rise to gross violations of human rights, with preventive detention laws being used extensively. More than 100,000 people were arrested and detained for political reasons, often under false charges. This included political opposition leaders, trade union leaders and social activists. The government also imposed censorship on newspapers, media outlets and prohibitions on public gatherings. The Constitution of India and all of its protections were entirely suspended for 19 months. Now, some ten years later, there is an urgent need to understand the historical evolution of the emergence of human rights groups as well as to honestly assess the limitation of their efforts and to identify the new challenges before them. Forty years of "democracy" of popularly elected governments have brought little benefit to the bottom 40 percent of India's population. Distributive justice, popular participation, wars on poverty—all these still remain, by and large, pious intentions. Even amongst the marginalized sections of society like the tribal, the urge for protecting the human rights led to the foundation of formidable bodies like Banavasi Panchayat in West Bengal to fight for the cause of human rights.

Other Movements

For instance, the human rights movement has gradually encompassed the spheres like social and cultural rights, environmental degradation, rights of women and other marginalized sections of society, in addition to working in the field of civil and political rights of the people with renewed vigor, giving a sort of all inclusive character to the human rights movement in the country. A unique dimension of the human rights movement in India appears to be its diversification into hitherto uncharted domains due mainly to the felt needs of time. In other words, as and when, some public minded person noticed the violations of some rights of the people, he or she volunteered to take up the cudgels on behalf of the victims. Another remarkable highpoint in the efforts of the human rights organizations came when the government of India decided to set up the National Human Rights Commission (NHRC) in 1993. Interestingly, though a number of statutory commission and institutions existed for the protection and promotion of the rights of certain sections of society like Scheduled Castes and Scheduled Tribes, it was realized that such bodies neither have the mindset nor logistical support to effectively protect the rights of even their target groups. Moreover, the necessity was felt for some sort of dedicated national as well as provincial bodies that can comprehensively look into the issues of protection and promotion of human rights of all sections of society with adequate powers and administrative support system. However, showing its propensity to play to the gallery, the government also constituted a number of

other commissions like National Commission for Women, the National Commission for Minorities, and the National Commission for Sweeper Class etc. with the declared purpose of protecting and promoting the human rights of these sections of society.

Conclusion: The realization of Human Rights is dependent on a democratic society, where the people are empowered with information and knowledge, are able to scrutinize the functioning of their government and are capable of participating in a meaningful manner in the governance of the community. Human rights are the fundamental inherent rights of all human beings to which people are entitled simply by virtue of being born into the human family. While, on the one hand. They limit the power of the State to arbitrarily interfere with people's free exercise of their rights, on the other they require the State to take positive measures to create an enabling environment in which people may enjoy these rights. Governments and other duty bearers are under an obligation to respect, protect and fulfil human rights, and are responsible for ensuring legal entitlements and remedies in case of non-fulfilment. From a legal standpoint, human rights are the individual and collective rights recognized by States and enshrined in their constitutions and in international law. A functional protection system requires not only the ratification of the relevant human rights treaties but, arguably, also their constitutional protection and further implementation, as necessary, through the enactment of appropriate legislation.

Owing to certain inherent contradictions in the socio-economic system of the country, a large number of people found themselves out of the reckoning to enjoy even the basic human rights guaranteed to the citizens of India. Moreover, with the disappearance of the euphoria attached to the attainment of the independence for the country, the stark realities of running a democratic system of government in a heterogeneous country started having a telling effect on the enjoyment of the human rights by the people. Thus, over the years, the history of human rights movement in India has turned out to be a chronicle of the civil society initiatives in securing for the marginalized, exploited and politically persecuted people their due share and respectful place in socio-economic and political system of the country even in the face vehement resistance of the vested sections of the society and the government.

Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian sub-continent over a very long stretch of time. As Jawaharlal Nehru wrote, there is "an unbroken continuity between the most: modern and the most ancient phases of Hindu thought extending Over- three thousand years." The rights of man have been the concern of all civilizations from time immemorial. "In this context, Mahatma Gandhi remarks, "I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore my service to India includes the services of humanity." Human rights have always occupied a place of paramount importance in India's rich legacy because India believed in the principle, "Vasudhaiva kutumbakam,

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