

Challenges on Human Rights in India

Reshma V.R.

M. Phil in English Literature

University of Kerala, India

Abstract

Certain basic rights relating to life, liberty and freedom of movement for which all the human being are entitled to without any discrimination may be termed as human rights. In every society two classes of people are found, the governing class and the governed. The governed are always the suppressed and oppressed class and are denied of their basic rights of life. All through the ages, men have the fought for their freedoms. With the establishment of United Nations in 1945, and with the end of colonial rule, most of the nations became free and the cause for the protection and promotion of human rights gathered momentum. The Indian Constitution, one of the largest treatises on human rights, came into being on 26th January 1950. But in spite of the constitutional provisions and various human rights laws for the protection of human rights, the citizens are still subjected to various forms of discriminations and torture and denial of basic rights. This article attempts to highlight the challenges on human rights in India.

Keywords- Bill of Rights, Discrimination, Fundamental Rights, Protection, UN Charter

Introduction

All human beings are entitled to live with dignity and honour irrespective of their nationality, gender, race, religion or social status for which certain basic rights are inevitable and these basic rights may be termed as 'Human Rights'. The history of men hitherto has been one of suppression and deprivation of their fundamental rights by the governing class and the endless struggle for freedom of life and liberties. With the end of colonial rule, many Afro- Asian and Latin American nations became free and the modern Nation- States system came into being. The horrible experience of world war- II and the shock waves created by the war on mankind gave birth to the establishment of the United Nations Organisation in October 1945 as a protector of peace for humanity. With the universal Declaration of Human Rights in 1948 by the United Nations General Assembly, there was a growing need among the member Countries to work together for the promotion and protection of human rights. India also became a member of the United Nations and a signatory to the Universal Declaration of

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Human Rights in 1948. The evolution of India's human rights has its own history. The methods of suppression used by the British against the vast majority of India during the freedom struggle were so harsh and inhuman that the constitution makers, after attaining independence, laid emphasis on providing certain basic rights to its citizens duly protected by the constitution and guarded by an impartial and independent judiciary. The first step in this direction was the incorporation of 'Fundamental rights' in tune with the 'Bill of Rights' of the American Constitution and the provisions of the United Nations Charter.

The Fundamental Rights embodied in Part-III of the Indian Constitution guarantee the Right to Equality (Article 14 to 18), Right to Freedom (Article 19 to 22), Right against Exploitation (Article 23 to 24), Right to Religion (Article 25 to 28), Cultural and Educational Rights (Articles 29 to 30), and Right to Constitutional Remedies (Article 32). The Indian Constitution formally came into being on 26th Jan-1950. But independent India still witnessed various forms of discriminations on its citizens, may be due to the cultural, religious and linguistic diversities and the caste based social order of the Indian polity. So in order to prevent all forms of discriminations and to improve the quality of life and also in furtherance of promoting and protecting human rights, the Government of India brought into being a number of legislative measures over the last six decades. To mention a few, the Dowry Prohibition Act-1961, Child Labour(Prohibition and Regulation) Act 1986, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act-1989, , National Commission for Minorities Act-1992, Protection of Human Rights Act 1993, Protection of women from Domestic Violation At 2005, Right to Compulsory Education Act 2009 etc.

But in spite of these laws, violations of human rights in India continue to be unabated. It is in this context that the challenges on human rights in India have to be discussed. The challenges on human rights in India have many dimensions with a bearing on the socio-economic and political as well as the religious and legal or constitutional conditions of India. India is the largest democracy in the world having different cultures, languages, beliefs, customs and conventions among its people. India has the lengthiest written Constitution as well. But though the constitution guarantees the protection of basic or fundamental human rights, it appears that the state often acts as a violator. The biggest challenge on the legal point of view is the enactment of the Armed Forces Special Powers Act-1958 which is popularly known as AFSPA. The Armed Forces have been equipped with indisputable powers by the provisions of the Act and as a result the excessive use of force on the people cannot be challenged in any court of law in India. Even the armed forces can shoot to kill a person in a 'disturbed area' designated by the Central Govt. or State Governments and provide legal protection to the forces. Instances of extra judicial killings in the state of Manipur has been reported recently and the Honourable Supreme Court of India in July 14th 2016, while ordering an investigation

into the Manipur killings ruled that AFSPA does not provide immunity to the security personnel who use excessive force.

AFSPA was enacted to assist the State Governments to help maintain internal disturbances and was initially introduced in the North- Eastern states of Arunachal Pradesh, Manipur, Assam, Meghalaya, Mizoram, Nagaland and Tripura and later it was extended to the State of Jammu and Kashmir. AFSPA is still being used to crack down the Maoist insurgencies in the North Eastern states as well as against the separatist and terrorist operatives in the states of Jammu and Kashmir. Human rights activists raised much hue and cry over the use of AFSPA and alleged violations of Human Rights in Jammu and Kashmir. It is ironical to note that Irom Sharmila, the human rights activist from the state of Manipur led a hunger strike for 16 years from 5th Nov-2000 to 9th August- 2016 for the repeal of APSPA could not bring any success. Another challenge is the Unlawful Activities (Prevention) Act -1967 as amended by the Unlawful Activities (Prevention) Amendment Act -2012 which allows detention without a charge sheet up to 180 days and police custody up to 30days. Its main objective was to make powers available for dealing with activities directed against the integrity and sovereignty of India. Illegal arrest and detention and misuse of UAPA raises serious questions on human rights situation in India.

When we look at the Constitutional checks on human rights, Article 19 (2) of the Indian constitution authorises the government to impose reasonable restrictions upon the freedom of speech and expression in the interest of territorial integrity and sovereignty of India. So also the Fundamental Rights guaranteed by the constitution can be suspended in times of emergency. Thus the legal and the constitutional limits put serious challenges on human rights in India.

The challenge on human rights on the political point of view could be related to the merciless killings of human rights activists, rationalists and men of letters who are critics of governmental policies and who have voiced against the evil practices prevailed in the society. Dr. Narendra Dabholkar, writer and social activist was murdered on 20th August 2013 at Pune in Maharashtra who campaigned against superstitions and voiced against India's caste system. In yet another incident Govind Pansare, Marathi writer and activist who was critic of extreme religious chauvinism was shot on February 16th of 2015 at Kolhapur in Maharashtra and died on 20th of February 2015. Similarly Kendriya Sahitya Academy Awardee and Anti superstition Activist, Prof. M.G Kalburgi was murdered on 30th August 2015 at his residence in Dharwad District in Karnataka. Of late, journalist turned activist, Gauri Lankesh was killed outside her home on 15th September 2017. She was against caste based discrimination and spoken against religious extremism.

The challenges on the religious point of view could be attributed to the persecutions of the religious minorities and Dalits in India. The Pehlukan lynching by the Alwar cow vigilantes in

Rajasthan, Mohammed Akhlaq lynching by the Dadri mob in Uttar Pradesh for suspected cow slaughter and beef keeping and Afrasul Khan killing over love jihad in Rajasamand in Rajasthan gone viral in the social media, exposed the shocking evidences of the barbaric acts committed against the minorities in India. It also sent shock waves to the secular fabric of India.

The treatment of Dalits in India is also no better. The suicide of Rohit Vemula, a PhD scholar of the University of Hyderabad is an eye opener on how the caste discrimination is dominant in our campuses. It sparked nation wide protests calling for reforms in higher education. The challenges on human rights in India have some socio- economic bearing also. Caste system is deep-rooted and institutionalised in India so much so that the members of the lower castes are forced to engage in manual scavenging which is considered as one of the most degrading occupations. It is prevalent in the states of Rajasthan, Gujarat, Madhya Pradesh and Uttar Pradesh in spite of its prohibition by law in 1993. Safai Karmachari Andolan, the movement for total eradication of manual scavenging formed by Bezwada Wilson, activist and Ramon Magsaysay award winner continue their mission to liberate and rehabilitate all manual scavengers in India. 'Honour Killing' is another challenge on human rights in India for which no effective legislation is in place so far to curb the heinous crime.

From the economic point of view, employment of child labour and forced labour are the major challenges on human rights in India. Both child labour and forced labour are prohibited by the constitution of India. But it is very rampant all over India and it is used as a means of exploitation for financial gains. The children are deprived of their basic rights including the right to education and secluded from social, mental and physical interactions.

Apart from the above, gender discrimination, discrimination against women and children, poverty, lack of sanitation, lack of proper education etc are some other challenges on human rights in India. Mandated by the Protection of Human Rights Act-1993, the National Human Rights Commission was established in India on 29th September 1993 with a view to promote and protect human rights. But the Commission is an Autonomous Body and derives no constitutional powers. It cannot directly investigate complaints of violations either by the security personnel or by the Governmental Agencies, but can only seek reports from the central Government and make recommendations. Thus the very purpose of the commission for which it is constituted, is defeated. Certain suggestions are put forth in this Article to improve the human rights situation in India.

On the domestic level, AFSPA should either be repealed or be amended in such a way that the security personnel should not endanger the life and liberty of innocent civilians. UAPA also requires amendments in a fair and square manner so that illegal custody of a person without a charge cannot go indefinitely. The discriminatory attitude towards the religious minorities and Dalits by the Majority needs to be changed. In spite of the constitutional safe guards, the minorities feel a sense of insecurity

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in the country. The state should act in a responsible manner to protect the constitutional rights of the minorities. The National Human Rights Commission of India should be accorded with constitutional status so that the commission will be able to enforce the human rights laws, check its violations and punish the guilty. The Fundamental Rights guaranteed by the constitution should be made absolute so that the citizens would be able to enjoy the rights without any restrictions.

On the International arena, India has not ratified the UN Convention against Torture signed in 1997. The Law Commission of India has recommended the centre to ratify UNCAT. Similarly India has not ratified the 'Optional Protocol to the UN Convention Against Torture' which establishes a system of regular visits by independent National and International bodies to where people are deprived of their liberty – an important safe guard against custodial torture. Unless and until India addresses these challenges and adhere to the International Treaties and Conventions, the human rights index of India will scale down further.

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