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PROTECTION AND PROMOTION OF HUMAN RIGHTS IN INDIA: A REVIEW

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Abstract

The idea of human rights though of comparatively recent origin, is about the perennial search of human being for good life. International concern for human rights, human welfare and human dignity has evolved along with the evolution of the state system and of the process of organising the international system of states. The human civilisation has always had concern for human rights throughout history. Ancient civilizations such as the Indian have had a world view of human welfare. They spoke of the entire world to be one, single, large family – Vasudhaiva Kutumbakam. Their religious prayers often sought peace and prosperity for all beings of the universe. India being the largest democracy in the world always pays high respect towards protection and promotion of human rights. As Justice Krishna Iyer has rightly pointed out: "The human rights heritage of Bharat, in its modern verbal append, may be traced to the constitution of India which marks the watershed in this sublime branch of jurisprudence." The preamble to the Indian constitution, the fundamental Rights mentioned in part III, the Directive Principle of state Policies (Part IV) and the Fundamental Duties mentioned in Part IV(A) constitute the human rights framework in the constitution of India. Thus, the realization of the human rights in India is not as much a question of individuals" claim against the state as of the responsibility of the state. Whether the individual asks for his rights or not the state must secure them to him. It is not merely an expectation from the state based on any principle of morality, fairness or international law but a constitutional command" The basic philosophy of our constitution is welfare. One cannot speak of welfare state without taking care of the millions of this poor and the downtrodden, at the same time ensuring the rights and dignities of all citizen. The Preamble, the Fundamental Rights and The Directive Principles of the State Policy constitute the core of constitutional philosophy. In the Preamble, one finds the soul, the objectives and philosophy of the constitution. The need for justice, social, economic and political, fraternity and dignity of individual are the objectives for which the people have given the constitution to themselves. In the Fundamental Rights one finds individual right philosophy and the directive principles to promote social justice.

Keywords : Human Rights, Social Justice, Constitution, India

Introduction:

According to Justice K, Subba Rao, the former Chief Justice of India "Our constitution has laid down a comprehensive scheme for the governance of our country. It had propounded the high concept of the rule of Law, in which freedom, equality and social justice were intricately integrated. It also rejected the authoritarian pathway but accepted constitutional democracy as the only route leading to welfare state". The civil and political rights are most valuable human rights. The constitution of India addressed these rights as fundamental rights in Part III. These rights are made enforceable by courts and state is made responsible for safeguarding the fundamental rights. Part IV of the constitution (Art.36-51) contains the Directive Principles of state policy (DPSP) These principles enshrined in Part IV of the Constitution are aimed at securing social and economic freedom of the people by appropriate actions. The economic, social and cultural rights are considered to be the vital components of Human Rights. The wide array of these rights, when viewed through the prism of human rights call for their proper implementation and adequate enforcement at the national level, so that the benefits percolate down to the masses. The constitution of India has addressed these economic and social rights under the umbrella of Directive Principles of State Policies. They are in the nature of directions to the legislature and the executive that they should exercise their authority in such a manner as to ensure due respect for, and observance of these principles. Although these directions are not enforceable by the courts, are nevertheless fundamental in the governance of the country.

Objectives:

The main objectives of the paper are to highlight the human rights promotion, protection and violations in India.

Discussion:

Institutional safeguard Human Rights in India

Universal human rights standards and norms have been incorporated within the domestic laws of various countries. Various international instruments have also been ratified by countries, either by including them through legislations or by undertaking to directly comply with the obligations contained therein by way of automatic adoption. The existence of laws that protect human rights are not sufficient if there are no institutions to ensure the effective implementation of these rights. It therefore becomes imperative for states to establish national infrastructure, including relevant independent and impartial institutions, which can promote and protect human rights.

National Human Rights Commission: --

In order to promote and protect human rights in India – the Indian Parliament has enacted the Protection of Human Right Act in 1993 and established the National Human Right Commission. The Act also calls for the establishment of State Human Rights Commissions in order to complement the functioning of the National Human Rights Commission and also to ensure that redress mechanisms are within easy reach of the complainants across the country. The National Human Rights Commission comprises of a chairperson who is a former Chief

Justice of the Supreme Court, and four other members, a present or former Judge of the Supreme Court, a present or former Chief Justice of a High Court and two persons having knowledge of, or practical experience in matter relating to human rights. The President of India appoints the Chairperson and other members of the Commission based on the recommendations of the Prime Minister, the Speaker of Lok Sabha, Home Minister, the leader of the Opposition in Lok Sabha and Rajya Sabha and Deputy Chairperson of the Rajya Sabha.

So far the powers and functions of the National Human Rights Commission are concerned – the Commission can inquire into and investigate complains of human rights violations, their abetment, or the negligence in the prevention of such violations by a public servant. Such inquiry may be undertaken through its own institution (Suo motu) or based on petitions presented by a victim or any person on his / her behalf. The National Human Rights Commission has been vested with the powers similar to those available to civil courts while trying a suit. Upon the completion of an inquiry, the Commission may make recommendations to the government or the authority concerned for the initiation of proceedings for prosecution or any other action as it deems fit. It may also approach the Supreme Court or the High Courts for a direction, order or writ, as such courts may consider necessary. Recommendations may be made to the government or the authority concerned for a grant of immediate interim relief to the victim as is considered necessary. The National Human Rights Commission undertakes inspections and makes recommendations on living conditions in jails and other institutions. It is also entrusted with the spreading human rights literacy and awareness and encouraging the effort of non- governmental organizations and institutions working in the field of human rights. An individual who has suffered human rights violations or any person on his or her behalf can approach the National Human Rights Commission to lodge a complaint, which may be done in any language. However, the complaint is required to approach the Commission within one year of the Commission of the alleged violation. No fee is charged for registering a complaint.

It is fact that the creation of the National Human Rights Commission under the Protection of the Human Rights Acts 1993 has marked the beginning of a new era of human rights governance in India. Since its inception it has received popular recognition as indispensable institution of governance due to its continuous efforts to maintain the standard of integrity and transparency in its functioning. As watchdog body, the commission has so far done a credible job in not only promoting human rights in the country, but also raising the image of the nation in the community of states.

However, the National Human Rights Commission has certain limitations due to which it is facing problems in implementing its recommendations. As per section 18 of the Act the Commission is merely a recommendatory body. It has no power to enforce its decisions. If the concerned government refuses to accept the recommendations, there is no law which empowers the National Human Rights Commission to force the government to implement it. Besides, section 19 of the Act does not allow the Commission to take the cognizance of the case of violations of human rights by armed forces. Since a large number of complaints of violation of human rights are directed against the member of armed forces, hence there is an urgent necessity to amend this section 19.

Besides, Section 32 of the Protection of Human Rights Act makes the National Human Rights Commission always dependent on the Union Government for financial assistance. So, there is a dire need to amend the Section 32 to provide financial autonomy to the commission.

Here it is important to note that besides National Human Rights Commission and State Human Rights Commissions --- there are other commissions which are also very active in protecting and promoting human rights of various vulnerable groups in India.

National Commission for women --

The National Commission of Women (NCW) is a statutory body constituted under the National commission for Women Act 1990. The commission is established with a view to protect and promote the interests and rights of women in India. The National Commission for Women consists of a chairperson, five members and a member secretary all nominated by the Central Government according to guidelines provided for in the Act. The Commission investigates and examines all matters relating to safeguards provided for women under the constitution and other laws. It looks into complaints and takes Suo motu notice of matters relating to non-implementation of laws and non- compliance of policy decisions, instructions etc. The Parivarik Mahila Lok Adalot (PMLA) is an innovative mechanism developed by the National Commission for Women, which has taken up many cases so far. It deals with measures pertaining to family laws, encouraging settlement of disputes outside the formal legal framework and aiming at empowering women in the justice delivery system.

National Commission for Minorities -

The National Commission for Minorities was first constituted in 1978 by a Govt. of India Resolution dated 12th January, 1978 to look into the welfare of minorities. The Commission was made a statutory body in 1992, with the passing of National Commission for Minorities Act in order to better address the interest of minorities. The Commission recommends to the central or state governments the ways to effectively implement the safeguard for the protection of minorities, conduct studies on discrimination against minorities and recommends measures to be undertaken, promote research on issues relating to the socio- economic and educational development of minorities and submit reports to the Central government on any matter pertaining to minorities.

National Commission for Scheduled Castes and Scheduled Tribes -

The National Commission for the Scheduled Castes and Scheduled Tribes came into being on the passing of the Constitution (Sixty-Five) Amendment Act 1990, and was constituted with the objectives of monitoring and implementing all the safeguards provided for Scheduled Castes and Scheduled Tribes under the Constitutional and legal provisions. However, the National Commission for Scheduled castes and Scheduled Tribes was bifurcated in August 2003 by the Constitution (Ninety Forth) Amendment Act 2002, to form two separate Commissions. This Commissions are mandated to participate and advice on the planning process of the socio- economic development of the Scheduled Castes and Scheduled Tribes respectively and evaluate the

progress of their development. They are required to present reports on the working of the safeguards to the President and recommendations for their effective implementation.

National Commission for Protection of Child Rights.

In 2005 the Parliament has enacted the Commission for Protection of Child Right Act established the National Commission for Protection of Child Right, state Commission for Protection of Child Rights, and Children Court's. One of the main functions of the Commission is to examine and review the safeguard provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation. The Commission also will look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantage children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures.

Conclusion: --- Thus, it is quite evident that India has given importance in promotion and protection of human rights not only through the constitution, but also through various statutory bodies. It is a fact that these bodies are suffering from some limitations and as a result are unable to stand by the hope and aspirations of the common people. So, for rendering justice to millions of victims of human rights violations the government should come forward and take effective remedial measures by necessary amendments to the concerned legislations.

References

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To give clear expression to the constitutional provisions, a range of legislative measures have been enacted to end discrimination against Scheduled Caste and Schedule Tribes. These, interalia, include:

a) The Protection of Civil Rights Act, 1955.

b) The Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act,1989.