

## DE JURE NEXUS LAW JOURNAL

Author:  
Diksha Goyal  
Punjab University, Chandigarh  
LL.B. (3 Years), 3<sup>rd</sup> Year.

### **HUMAN RIGHTS VIOLATION- AN ANATHEMA TO SOCIETY**

Human Rights are the rights which are possessed by every human being irrespective of their race, caste, nationality, sex, etc. simply because they are human beings. These are the rights which are essential for the protection of dignity and maintenance of individuals and create conditions in which every human being can develop his personality to the fullest extent. Human rights become operative with the birth of an individual.

Even though the origin of human rights is ancient, the international concern with human rights may be said to be of comparatively recent origin. The United Nation Charter marks the advent of systematic human rights protection within the international system.

### **UNIVERSAL DECLARATION OF HUMAN RIGHTS**

In 1948, the General Assembly passed the Universal Declaration of Human Rights. This has been hailed as a victory of individuals in respect of human rights. There are 30 Articles in Declaration which describe in details the human rights and fundamental freedoms. But it has no legal force behind it.

### **THE INTERNATIONAL BILL OF HUMAN RIGHTS**

The International Bill of human rights, a major undertaking which began at the inception of the organisation more than 30 years ago, is now in effect. It comprises of following

- The Universal Declaration of Human Rights, 1948
- The Covenant on Civil and Political Rights, 1966
- The Covenant on Economic, Social and Cultural Rights, 1966
- The Optional Protocol to the Covenant on Civil and Political Rights, 1966

### **HUMAN RIGHTS AND INDIAN CONSTITUTION**

The Indian Constitution bears the impact of Universal Declaration of Human Rights, 1948. When the Constitution of India was being drafted and adopted, the Universal Declaration had already been passed by the General Assembly of the U.N. The Supreme Court of India recognised the influence of Universal Declaration of Human Rights. The Indian Constitution incorporates human rights in following three ways:-

- Specifically enumerated rights (as Fundamental Rights and Directive Principles of State Policy)
- Other rights or rights not specifically enumerated (part of existing Fundamental rights)
- Unenumerated rights (yet not recognised)

**PROTECTION OF HUMAN RIGHTS ACT, 1994**



De Jure Nexus

LAW JOURNAL

The Protection of Human Rights Act, 1994 came into force on January 10, 1994 in which National Commission of Human Rights was established for the redressal of grievances of human rights violation. Section 2(d) of the act defines „human rights“ 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 act gave very narrow definition of human rights. In *STATE OF MAHARASHTRA VS. SAU SHOBHA VITHAL KOITE*<sup>1</sup> held that right to work cannot be included in the definition of human rights.

### **NATIONAL HUMAN RIGHTS COMMISSION (NHRC)**

The above act has provided with the establishment of NHRC for minorities, scheduled caste/tribes, women etc. It has rendered a signal service for the cause of observance of human rights. It has proved to be an effective body for observance of human rights in the country.

### **STATE HUMAN RIGHTS COMMISSION**

The act also provides for the establishments of State human rights commission which may be constituted by the State Government.

## **HUMAN RIGHTS VIOLATION**

To protect human rights is to ensure that people receive some degree of decent, humane treatment. To violate basic human rights, on the other hand, is to deny individuals their fundamental more entitlements. Examples are typically deemed “crimes against humanity”, including genocide, torture, slavery, rape, deliberate starvation, etc.

### **1) ABUSE OF CHILD RIGHTS**

India signed CHILD RIGHTS CONVENTION, 1989 (CRC) as on 11 December, 1992. As per the provisions of CRC, it became fundamental and mandatory aspect for India to provide Free and compulsory Primary education to all the children below fourteen years of age at State’s expenses. Due to this, the Article 45 which was mere directive, was given place in Fundamental rights as Article 21-A. In *UNNI KRISHNAN VS. STATE OF A.P.*<sup>2</sup> Supreme Court emphasised on Right to Education by saying that it is the most important function of State and local governments. At present the scenario is such that most of the children do not get admission in schools due to scarcity of schools. The advantage of this important provision is taken by those who have adequate purchasing power. Due to lack of education, they become the main target of abuse, exploitation and many becomes criminals, prostitutes, etc. In recent reports, crimes against kids have been seen on rise. *In 2017, crime rate was 33,210 against kids. In 2018, it was increased to 40,810.* The worst states are Delhi with 1851, Haryana with 1934, Chattisgarh with 1827, Maharashtra with 6386 Assam with 1733, etc.

---

<sup>1</sup> AIR 2006 Bom 44, 49

## 2) PROTECTION GIVEN TO THE ACCUSED

Accused in India has been given protection under various Articles of the Constitution like 14, 21, 22, 32, etc. Such protection has been given to them by CONSTITUTION 42<sup>ND</sup> AMENDMENT act, 1971, in which the word „citizen“ was replaced by „person“. Due to scarcity of judges and lacunae in the trial, concept of speedy trial has been distorted. Due to this accused gets benefit of doubt and get acquitted. As the conviction rate is low in India, notion of crime free state cannot be achieved. In India institutions of police, shelter homes, jails etc. are fully corrupt. Due to faulty and defective investigation, the conviction rate has dropped. The very basis of setting up of institutions is jeopardised.

### ABUSE OF ACCUSED RIGHTS

Accused has been provided with numerous rights by the Constitution of India and various acts too. But such rights are being violated and exploitation is done. Various guidelines have also been delivered by the courts in India, but it is of no use.

In *STATE OF MAHARASHTRA VS. SHOBHARAM*<sup>3</sup>, the grounds of arrest was not informed.

In *KHATRI VS. STATE OF BIHAR*<sup>4</sup>, the accused was not produced before the nearest Magistrate within 24 hours of arrest.

In *STATE OF MAHARASHTRA VS. BHAURAO GOWANDE*<sup>5</sup>, custodial violence was committed by the police. The court held that detenu has right to live a dignified life.

The human rights of the accused are violated through the practice of Lie Detection, Brain Mapping, Narco-Analysis test etc. Supreme Court held in various cases that such practices are illegal as it violates accused rights, but can be used in certain cases and to some extent.

In *R.D. UPADHYAYA VS. STATE OF ANDHRA PRADESH*<sup>6</sup>, which based on United Nations Women Prisoners convention that innocent children are not convicts as they have not committed any crime. They must not languish in jail because of their mothers. But the guidelines were not followed, due to which accused rights are violated.

## 3) DIGNITY OF WOMEN

Gender discrimination has been widely recognised in our country. Despite of numerous provisions under Article 14 to 18 that deals with equality, status of women is still low to that of men. India has also signed Convention on Elimination of Discrimination Against Women, 1979- CEDAW as on 30 JULY, 1980. It clearly provides elimination of all kinds of discrimination against women through legislative measures. *As per the latest report the gap*

<sup>3</sup> AIR 1996 SC 1910:1996 Supp. SCR 239

<sup>4</sup> AIR 1981 SC 928, 932: (1981) 1 SCC 635

<sup>5</sup> 417 of 2008 (CRL) NO. 583 OF 2007

*between literacy rate of men and women in India is 14.4% points with male literacy 84.7% and that of female is 70.3%. so we can see that inequality is done in area of education too.*

Other aspects are:-

1) **BAN OF ENTRY OF WOMEN AT CERTAIN RELIGIOUS PLACES:-** We have seen numerous times that entry of women is prohibited in various religious places like library of Aligadh Muslim University, Sabrimala temple etc. though now, entry is permitted in sabrimala temple as per latest Supreme Court decision. But still there are lot more cases that needed attention of Government.

2) **PRACTICE OF WITCHCRAFT:-** witchcraft is a belief on doctrines like manism and dynamism. Women are blamed as accused practising witchcraft. In India, it is widely practised in central and eastern parts. In Hindi witchcraft is also known as „Dayan Pratha“. The Prevention of Witchcraft Act is already in existence in India, but still deaths of women are increasing constantly. In 1995, more than 900 women were killed as recorded by Jharkand Police, 240 in Ranchi. It is an international problem and role of NHRC and SHRCs is inactive on this .

3) **SUROGACY:-** Surrogacy means the practice of acting or being used as a surrogate especially as a surrogate mother. There are many health related issues, legal issues regarding surrogacy. In India, there is no law regarding surrogacy, despite the fact that it is the main centre in the world for commercial surrogacy. The hon“ble Supreme Court of India has given place to surrogacy in Article 21 of the Constitution. But still this technology is misused a lot in India.

4) **HONOUR KILLING:-** Honour killing is also known as customary killing. The main accused of this are girls and women. The main reason behind it is unacceptance of arrange marriage and dressing. Many girls and women are killed by their own families. It is an age old tradition found in India. In re: **INDIAN WOMEN GANG-RAPED on ORDER of VILLAGE COURT**<sup>7</sup> of a newspaper report relating to gang-rape of 20 year old women on the orders of community panchayat, as punishment, for having a relationship with a man from different community. Besides awarding compensation to the victim, the Court directed the State to took measures on this.

Women all over India are struggling for obtaining the inherent dignity. But there are very few to listen them. The miserable condition of women is evident since ages.

#### **4) EUTHANASIA (MERCY KILLING)**

Euthanasia i.e. mercy killing means deliberate ending of the life if a person. Mercy killing provides painless death or easy death to the person who is suffering from an incurable disease. It is known as „Right to Die“ in various countries. In India, „Right to Life“ is

---

guaranteed under Article 21 of the Constitution which provides right to live with dignity. But till the time, it does not include right to die in its ambit. Personal liberty to die willingly is not granted in India by the Supreme Court. In *GIAN KAUR VS. STATE OF PUNJAB*<sup>8</sup>, in case of non- curable disease, it is not justifiable to wait till the natural death of the patient. In order to reduce suffering of the patient, it would become necessary to include „Right to Die“ in Article 21 of the Constitution. In India, passive euthanasia is permitted, and active euthanasia is illegal. The major landmark case on this is, *ARUNA RAMCHANDRA SHANBAUG VS. UNION OF INDIA*<sup>9</sup>, in which patient was in permanent vegetative state from last 37 years but had little brain activity. Active euthanasia is demanded in this. Supreme Court said that in the absence of legislature on this, it cannot be allowed. It held that passive euthanasia is permitted and issued various guidelines on this.

### **5) RESERVATION- A VICIOUS CRICLE**

The framers of the Indian Constitution knew that backwardness cannot be eradicated immediately. So, they preferred reservation policy for Scheduled Castes and Scheduled Tribes for 10 years. But till date, the reservation is continued. More than six and a half decades have been passed; still backwardness is not removed from India. So, they recognized social, economic, educational and political backwardness. But politics of reservation policy is played in India. Through the Mandal Commission Case i.e. *INDRA SAWHNEY VS. UNION OF INDIA*<sup>10</sup>, the Supreme Court of India has declared that in no case the reservation must exceed 50% of the total backwardness prevailing in India. Despite such facts various communities in India demand reservations. When these communities switch on to agitation, the governments passes ordinance for granting reservation to such communities which generally exceeds 50% ceiling decided by the Supreme Court.

### **6) POVERTY- A CAUSATIVE**

More than 800 million people in India are considered poor. Most of them live in the countryside and keep afloat with odd jobs, without sufficient drinking water supply, without garbage disposal and in many cases without electricity. The poor hygiene conditions are the cause of diseases such as cholera, typhus and dysentery, in which especially children suffer and die. Poverty in India impacts children, families and individuals in a variety of different ways through:

- High infant mortality
- Malnutrition
- Child labour
- Lack of education
- Child marriage
- HIV / AIDS

---

<sup>8</sup>JT 1996 (3) SC 339



In *OLGA TELLIS AND ORS. VS. BOMBAY MUNICIPAL CORPORATION*<sup>11</sup> held that „Right to livelihood is included in the right to life“ as “no person can live without the means of living.” However, these rights are not available to those who are living below poverty line.

## CONCLUSION

The framers of INDIAN CONSTITUTION guaranteed certain rights to the people of India. These rights were not to be subject of any reduction or extinguishment in any circumstances. But since inception of Constitution, basic structure norms are not maintained. It results in violation of Fundamental rights provided to citizens which ultimately led to the violation of Human Rights in India. So, we can say with the help of above points that *HUMAN RIGHTS VIOLATION IS AN ANATHEMA TO SOCIETY*.



De Jure Nexus  
LAW JOURNAL

---