

Indian constitution and human rights

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Abstract

The framers of the Indian Constitution were pretty much influenced by the conception of human rights contained within the Universal Declaration of Human Rights and bonded several of these rights in our constitution part III and part IV, although separate, carry the common theme of human rights. Once Human rights square measure bonded by a written constitution they're referred to as basic rights.

Fundamental rights square measure the fashionable name for what has been historically referred to as natural rights. they're basic as a result of a normal right is enforced by the standard law of the land and should be modified by the general assembly of the country, however the basic rights cannot be altered within the same manner. It is modified solely by amending the constitution itself. Basic rights square measure enforceable against the state. Scholar Nehru has same that "a basic right ought to be believe, not from the purpose of read of any explicit problem of the movement however has one thing that you simply wish to create permanent within the constitution".

Keywords: constitution, human rights, article

Introduction

Fundamental rights area unit dealt part IIIrd of the constitution, while directive principles of state policy area unit part IVth within the constitution. Whereas civil and political rights are incorporated within the Part IIIrd of the constitution, economic social and cultural rights are incorporated part IVth of the constitution. They're divided on the bottom of enforceability of the previous and non-enforceability of the latter within the quotes. Otherwise, the rights enclosed in each area unit equally necessary neither of those components is superior or inferior to the opposite. they're complimentary of every alternative as a result of a long they represent the human rights reign, as well as severally the civil and political rights and therefore the social and economic rights. While not one, the rights within the alternative don't seem to be solely incomplete, however conjointly unattainable; along they need been referred to as the conscience of the constitution.

History of India humanitarian act

In India humanitarian ideas become popular from the beginning of the nineteenth century. The abolition of sati (1829), abolition of slavery (1843), and abolition of female infanticide (1870), the formation of torture commission in the Madras presidency (1855), introduction of widow remarriage by legislation (1856), and prohibition of child marriage (1929), were restrains imposed tradition and the beginning of humanization legislation. The enactment of Indian Penal Code in 1860 and a series of prison and jail reforms by legislation and acts were based on reformist's tendencies. For preserving the rights of female children, the age of consent act of 1891 and the Abolition of Child Marriage act of 1929 were passed. In addition the Madras Government passed the Madras Children's Act and the Madras Elementary Education act in

1920 to safeguard children and provide better education at primary level. This humanitarian legislation prepared the ground for an awareness of human rights during war years.

The work for drafting a constitution for India was done during the time of the Universal Declaration of Human Rights. With the inspiration from the UDHR the framers of the constitution incorporated a list of rights, what is known as fundamental rights in the Indian constitution. We adopted the Patten of American Bill of Rights. The fundamental rights, that are guaranteed under the constitution have a close similarity with those in the U. N. Declaration of human Rights in form and content in Article 14, 15, 16, 19, 20, 21, 23, 25, 29, 31 and 32.

Preamble of the Constitution

The preamble of the constitution also explains the nature of Indian constitution and that states it upholds the dignity and rights of the people. The preamble reads like this:-

We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic and to secure its all citizens: Justice, Social economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all Fraternity, assuring the dignity of individual and the unity and integrity of the nation ^[1].

In our Constituent Assembly this twenty sixth day of November, 1949, do hereby adopt, enact and to give to ourselves this constitution.

In the preamble we are able to see it declares domination and sovereignty of the people and establishes a democratic, secular, socialistic republic. The constitution ensures justice for all. It provides liberty, equality and protective the dignity

¹ Indian Constitution

of the individuals. Equality of standing and chance is secured by abolishing all types of discrimination. The preamble additionally guarantees that each one people have dignity, that is a vital right, and there's no high or low individual. It guarantees fraternity that is incredibly necessary for a peaceful prosperous social life. So the preamble itself is that the basic root of all rights and justice.

Civil and political rights-(Fundamental Rights)

The rights of the people area unit enumerated within the part III and part IV of the constitution. Part III mentions the civil and political rights whereas the part IV mentions the social economic and cultural rights. Part III is thought because the basic rights that area unit justifiable rights. The part IV is thought because the Directive Principles of State Policy contains the non-justifiable rights. In alternative components of the constitution additionally we will see the rights of the people. as an example Article 300A is for the correct to property that isn't a basic right away.

A committee of the constituent assembly headed by Sardar Vallabhai Patel finalized Article 12-35 deals with basic right. Fundamental rights. These rights have not been outlined by the constitution. They are delineating as basic for their superior to standard laws; they will be altered solely through constitutional modification. Over all they are important for the total development of the human temperament, promoting Associate in Nursing individual's dignity and welfare. These rights not like alternative justifiable rights, area unit protected by the constitutional remedy by method of Associate in Nursing application direct to the Supreme Court below Article 32 that itself is enclosed within the part III. The fundamental rights do not seem to be absolute; intrinsically they are subjected to sure restrictions. Whereas a number of these restrictions area unit wheat out by the constitution. others is also obligatory by the government. Nevertheless, the reasonableness of such restrictions is to be determined upon by the courts. a number of these rights don't seem to be out there to the members of the defence force. A number of the rights area unit out there to all or any within the country, whereas some area unit out there solely to Indian voters. Articles 15, 16, 19, 29, 30 area unit fastened just for voters and also the remainder of the provisions of the part III area unit applicable to all or any persons residing at intervals the territory of Republic of India for the nowadays and subject to its jurisdiction,

There are six categories of fundamental rights. They are;-

1. Right to equality-Article 14to 18
2. Right to freedom –Article 19-22
3. Right against exploitation Article 23&24
4. Right to religion Article 25-28
5. Cultural and educational rights Article 29,30
6. Right to constitutional remedies Article 32

Article 19 clause 1sub clause (f) and Article 31 has been taken away from the part III of the constitution by the 44th amendment act of 1978.

1. Right to equality

1. Equality before law and equal protection of law. (Article. 14)
2. Prohibition of discrimination on grounds of religion caste

etc. Article. 15)

3. Equality of opportunity to employment. (Article.16)
4. Abolition of untouchability. (Article. 17)
5. Abolition of titles (Article. 18)

2. Right to freedom (Article.19)

- a) Freedom of speech and expression
- b) Freedom to assemble peacefully
- c) Freedom to form association and union
- d) Freedom to move anywhere in India
- e) Freedom to settle in any part of the country
- f) Freedom to do any job or profession

Protection in respect of conviction for offences (Article.20)

Right to life and personal liberty, Article21

(21A is related to the right to education to the children at the age group of 6-14.

It was included though the 86th amendment act of 2002. It implemented though the act of 2009; the right of children for free and compulsory education).

- d) Protection against arrest and detention in certain cases (Article.22)

3. Right against exploitation

- a. Prohibition of Traffic in human beings and forced labour. (Article23)
- b. Prohibition of employment of children in hazardous employment. (Article24)

4. Right to freedom of religion

1. Freedom of conscience and the right to profess practice and propagate religion (Article.25)
2. Freedom to manage religious affairs (Article. 26)
3. Freedom of payment of taxes for promotion of any particular religion. (Article.27)
4. Freedom as to attendance at religious instruction in certain educational institutions. (Article 28)

5. Cultural and educational rights of the minorities

1. Protection of language script or culture of minorities (Article.29)
2. Right of minorities to establish and administer educational institutions. (Article30)

6. Right to constitutional remedies (Article32)

This is one of the most important right in the constitution. Without this right the other right may remain in words without proper enforcement. The right to constitutional remedies helps us to enjoy the fundamental rights and can move to the court for the enforcement of the rights though the writ petitions. There are mainly five kinds of writs. They are:-

1. Writ of Habeas Corpus
2. Mandamus
3. Certiorari
4. Quo-warranto
5. Prohibition

The scope of elementary rights is wide enough to comprehend the new generation human rights. The courts whereas decoding the rights have introduced new rights into the class. As an example, the court declared that right to life means that

right to measure with human dignity not mere animal existence. Thus it demands clean atmosphere, food, water, education etc. but the rights presented by the constitution aren't absolute. Within the interest of the unity and integrity of the state and so as to secure public smarticle these rights will be fairly restricted. The state will impose restrictions over the enjoyment of the elemental rights within the interest of the sovereignty, integrity and security of the state, public order, morality, decency, health, friendly reference to foreign states etc. additional over associate emergency proclamation beneath Article 352 can curtail the individual liberties provided beneath Article 19. The availability for Preventive Detention is additionally a challenge to human rights protection beneath fundamental rights.

Socio, economic and culrural rights-(Directive Principles of State Policy)

The Directive Principles of State Policy are ideals, directions and rights aimed at establishing an economic and social democracy which is pledged in the preamble of the constitution. The idea of DPSP was borrowed from the Irish constitution. The importance of the DPSP is evident in the words of Dr.B.R. Ambedkar who stated that DPSP as the manifesto of aims and aspirations. DPSP enshrined in the part IV of the constitution. It sets out the ideals and objectives related with social economic and cultural up liftment. The Directive Principles of State Policy enshrines socio-economic rights which are part of the human rights.

These rights can be classified in to three categories 1. Directives in the nature of ideals of the state. 2. Directives shaping the policy of the state.3.Non-justiciable rights of the citizens.

1. Directives in the nature of ideals of the state.

1. The state shall strive to promote the welfare of the people by securing a social order permeated by social. economic and political justice Article 38 (1): to minimize inequality in income, status facilities and opportunities amongst individual and groups Article 38 (2)
2. The state shall endeavor to secure just and human conditions of work: a living wage, a decent standard of living and social and cultural opportunities for all workers (Article 43).
3. The state shall endeavor to raise the level of nutrition and standard of living and to improve public health. (Article 47)
4. The state shall direct its policy towards securing equitable distribution of the material resource of the community and prevention of concentration of wealth and means production. Article (39 (b), (c).
5. The state shall endeavor to promote international peace and co-operation (Article51)

2. Directive shaping the policy of the state

1. To establish economic democracy and justice by securing certain economic rights
2. To secure a Uniform Civil Code for the citizens. (Article.44)
3. To provide free and compulsory primary education (Article.45)

(Now this concept is a fundamental right and included in the Article 21A).

4. To prohibit consumption of liquor and intoxicating drugs except for medical purposes. (Article47)
5. To develop cottage industries (Article.43)
6. To organize agriculture and animal husbandry on modern lines (Article48)
7. To prevent slaughter of useful cattle's i.e. cows, calves and other milch and draught cattle.(Article48).
8. To organize village panchayats as units of self-governments (Article40)
9. To Promote educational and economic interest of weaker sections and to protect them from social justice.(Article.46)
10. To protect and improve the environment and safeguard forests and wild life Article 48A)
11. To protect and maintain places of historic or article importance. (Article49)
12. To separate the Judiciary from the executive.(Article50)

3. Non-justiciable rights of the citizens

1. Right to adequate means of livelihood. Article 39(a)
2. Right of both sexes to equal pay for equal work (Article 39(d)
3. Right against economist exploitation (39 (e),(f)
4. Right of children and the young to be protected against exploitation and to opportunities for healthy development, consonant with freedom and dignity. Article 39(f)
5. Right to equal opportunity for justice and free legal aid Article 39A
6. Right to work (Article 41)
7. 7 Right of public assistance in cases of unemployment, old age, sickness and other cases of undeserved want (Article 41)
8. Right to a living wage end conditions of ensuring decent standard of life for workers (Article 43)
9. Right of workers to participate management of industries (Article 43A)
10. Right to children to free and compulsory education Article 45.

Articles 39A, 44A, were included in the DPSP by 43nd amendment act of the constitution. By the 44th amendment, the Janatha Government introduced section 2 in Article 38 which speaks for minimizing inequality in income and status not only among people but also among groups.

The role of DPSP in promoting the human rights can be identified by analyzing the impotent initiatives taken by the state, based on the DPSP. For example; Zemindari abolition, Community Development Programmes, Implementation of Panchayat Raj, Agricultural subsidies, Land Reforms Reservation of seats, Public Distribution Schemes, Commission for minority, SC,ST, women and Children, Tribal welfare policies etc.

The part IV of the Indian constitution related to the Directive Principles of State Policy, which is much more exhaustive than the Universal Declaration. In short we can say that the India fully followed International Bill on Human Rights and Indian constitution protects such rights, according to the philosophy of Universal Declaration. India constituted the National commission for Human Rights for the redresses of

grievances of human rights violations. The commission's role is appreciated by the peoples of India and other human rights organizations working abroad.

Summary

Thus the philosophy of Human Rights and Fundamental Freedoms were incorporated in the Constitution of India in the Preamble and in the chapters of Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. The Hon'ble Supreme Court on its part has widened the ambit and the scope of Human Rights and Fundamental Freedoms. It has also included in its ambit of Human Rights, the right to speedy trial, the right to legal aid, the right to compensation, the right to education, the right to environment, the right to shelter, the right to health and many more.

These Human Rights provisions are a complex amalgam of civil and political rights, economic, social and cultural rights, religious rights, minority rights, educational rights etc. The classification of civil and political rights and economic social and cultural rights in the name of the Fundamental Rights and Directive Principles of State Policy under the Constitution is probably the first attempt in the world history. The makers of the International Covenant on Civil and Political Rights 1966 and International Covenant on Economic, Social and Cultural Rights, 1966 and classification of Human Rights Jurisprudence into two categories connote that they were influenced by the provisions of the Constitution of India. Moreover Indian Constitution was amended from time to time for the better promotion and protection of Human Rights and Fundamental Freedoms. Pursuant to the direction enshrined in Article 51 of the Constitution and International commitments, the parliament has passed the protection of Human Rights Act, 1993. It is the principal legislation for the promotion and protection of Human Rights in India. The Act provides for the setting of a National Human Rights Commission, State Human Rights Commission and Human Rights Courts, for the better protection of Human Rights and for matters incidental thereto. This Act was amended in the year 2006 for effective enforcement of Human Rights in the context of the present scenario.

References

1. The preamble as amended by 42nd Amendment is as follows; We, the people of India, having solemnly, resolved to constitute into sovereign socialist secular democratic republic and to secure to all its citizens: Justice Social, economic and political; Liberty of thought, expression, belief faith and worship; Equality of status and of opportunity and to promote among them all; Fraternity assuring the dignity of the individual and unity and integrity of the nation. In our constituent assembly this twenty-sixth day of November, 1949 do hereby adopt, enact and give to ourselves this constitution
2. Kesavan vs. State of Bombay AIR 1951 SC 128.
3. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by the law.
4. Article 22 (1) and (2) of the Constitution of India
5. Articles 22 (3), (4), (5) and (6) of the Constitution of India.

6. Article 22 (3) of the Constitution of India
7. For the purpose of enforcement of rights under Article 23 the parliament has enacted the following legislations. (1) The Bonded Labour System (Abolition) Act 1976 (2) The Equal Remuneration Act 1976 (3) The Minimum Wages Act 1948, (4) The Payment of Wages Act 1936 (5) The Immoral Traffic (Prevention) Act 1956
8. Article 37 of the Constitution of India.
9. Keshavananda Bharthi vs. State of Kerala (1973) 4SCC 225.