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Human Rights Violation of the Weaker Sections in India: A Constitutional Perspective

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Abstract:

In this paper author has tried to highlight what are the various legal steps that have been taken to meet the changing needs of the society to ensure the members of the general public to enjoy a dignified life in India. Man is a social animal who lives in society only exception on the earth. The term society is referred as a web of relations which is dynamic in nature. The great old civilization of man lived in the Indus valley. Before the advent of Britishers the religious texts were used as instruments with binding force to regulate society. It is pertinent to mention here that the conditions of women or untouchables were very miserable; there are evidences in the support of the assertion. The Hindu Varnasystem or social evil of untouchability, child marriage or sati Pratha etc. is the glaring examples of the human rights violations of the weaker sections. The regime of Britishers in India, which ruled for about 200 years tried to remove the social evils as mentioned above by introducing the modern concept like democracy or system of education in English medium etc. After Indian independence, 1947 the constitution became the supreme law of the land which came into force in 1950, eliminating all kinds of inequalities and discrimination based on caste, colour, gender or religion etc. Moreover the UDHR of 1948 proved an ideal document for the Indian constituent assembly. Accordingly the part third of the Indian Constitution incorporates various human rights as fundamental. But still the violations of human rights persists in the form of, untouchability, starvation, poor health condition, child rights abuse, women exploitation at work places, insanitary conditions and manual scavenging etc. Thanks to Indian parliament for enactment of the various legislations to deal with above referred few mentioned incidents of human rights violations especially of the weaker sections. The recent example is prohibition of manual scavenging. Various commissions like the NHRC, NSKC, NCSC, NCST, MCW and NCM etc at national to monitor the violations of human rights and other incidental matters connected thereto of this vulnerable sections.

Keywords: Weaker Sections, Untouchability, Hindu Varna System, Human Rights, Enactment, Manual Scavengerings

1. Introduction

As per Harold J. Laski "Rights are those conditions of social life without which no man can consider in general, to be himself at his best". Whereas according to Hob House, what we expect from others and others from us and all genuine rights are the conditions of social welfare.¹ Rights of man have been the concern of all civilizations from the time immemorial. Human rights were not unknown to the people of the earlier period. Dharma of Vedic period in India has also been championed of human rights. Indian view in this respect, *that all are children of God and all every one is the member of a universal family*. The non-violence principle of the 3rd B.C. given by Buddhism somewhat corresponds with the modern concept humanitarian. International arena, during 16th and 17th century rise of middle class was flanked by lawyers, teachers, artists and men of letter etc. They were against the feudal system. The industrial revolution proved anti-thesis to the prevailing scenario especially age old system of feudalism. Various legal instruments like Magna Carta(1215), Petition of Rights(1668), Bill of Rights, the international Bill of Rights of twentieth century(UDHR, ICCPR and ICSCER) and Indian Constitution (especially part-IIIrd and IVth) etc. proved very much effective in protecting the human rights²

¹Dr. Gokalesh Sharma, Human Rights and Social Justice(2004),p.1

² Ibid.p.2

particularly of the weaker sections. Moreover the Part –IIIrd of the Indian Constitution provides various fundamental rights for dignified life³

2. Home Rule Document

In the year of 1895 the constitution of India bill known as home rule document sought certain rights like freedom, inviolability of one's own house, right to property and equality before law for all citizens of India. It was first such document to claim certain rights for citizens. Further in this concern Moti Lal Nehru's Report (1928) incorporated nineteen fundamental rights viz. equality among man and woman etc. The reasons for the demand of such fundamental rights were as under:

- Lack of civil liberty
- Deplorable social condition e.g. untouchability and women conditions,
- Exploitation by Britishers
- Exploitation of tenant by landlord

Later on Indian Constitution came into force on 26th January, 1950 which bars all forms of discrimination or disabilities prevailing in the Indian society before the independence. The part third incorporated fundamental rights available to all persons/citizens without any distinction. Various human rights available under international bill of rights were incorporated as fundamental rights in the Indian Constitution. In the famous case of *Golak Nath*⁴ Justice Subha Rao opined that "*fundamental rights is modern name what has been traditionally known as natural rights.*" The civil as well as political rights⁵ in part third where as social and economic rights⁶ is in part-IVth of Indian Constitution. The provisions for the protection of the weaker sections of the society like Scheduled Caste (SC), Scheduled Tribe (ST), minority, women children, labour class etc. were expressly laid down in the Constitution⁷. Now various agencies like national commission for SC/ST, human rights, women, minority safai karmchhari commission with power to take necessary steps for the protection and to enhance social, economic and political justice for the all round development of weaker sections of the society in India.

3. Human Rights: An Overview

The term Human right refers to a bundle of rights linked with man's life. In other words, they are moral claims, inalienable and inherent in all human beings. These claims are articulated and formulated to achieve certain standards, which are much higher than the animal living and have been translated into legal rights. In this regard a major step was taken by the International community to adopt universal declaration of human rights⁸ with an aim to have a Common standard of achievement for all the people and nations across the world without any distinction. The idea of elaboration as well as protection of rights of human rights developed gradually and now very much in codified forms. In fact, some landmarks steps were taken to channelize such factors which care for human rights protection⁹. During the Nineteenth century these principles were adopted by a number newly independent States across the world especially in African and Asian countries including India. Further not only civil and political rights but social and economic rights also began to be recognized.¹⁰ The universal declaration of human rights (1948) was the first to lay down the concept in the preamble of the document viz "*Whereas recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world i.e. these rights are equally available to all men, inalienable and universal in nature*"

The Indian constitution incorporated some of the enlisted human rights in the form of fundamental rights and directive principles of state policy. The provisions for the protection of the weaker sections in the UDHR and INDIAN CONSTITUTION are shown as under:

³ Right to equality ,prohibition against the untouchability, right to freedom, right to life and now more specifically as apex court has laid in various landmark cases mean a dignified life, right against exploitation etc.

⁴ *Golak Nath v State of Punjab* A.I.R1967 SC 1207

⁵ ICCPR,1966

⁶ ICSCER,1966

⁷ Articles 14,15,16,17,23,24,38,39,41,42,43,45and 4; the Indian Constitution

⁸ UDHR is the first part of the international bill of rights, came to force on 10th December,1948

⁹ Magna Carta (1215), Petition of Rights (1668), Bill of Rights, International Bill of Rights of twentieth century (UDHR, ICCPR and ICSCER) and Indian Constitutional (especial part-IIIrd and IVth) etc

¹⁰ In India part-IVth: Directive Principles of State Policy(article36-51)

| S. No | UDHR(1948) | CONSTITUTION OF INDIA |
|-------|---|---|
| 1 | Everyone has the right to life, liberty and security of person art.3 | Right to life and personal liberty article 21 |
| 2 | No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. (Art.4) | Prohibition of traffic in human being and forced labour Article 23 |
| 3 | Equality before Law and Non-discrimination (Art.7) | Article 14 and 15 right to equality |
| 4 | Right to effective remedy (Art.8) | Article 32 remedies for enforcement of rights confirmed by part-IIIrd of Indian constitution |
| 5 | Right to freedom of movement [Art.13(1)] Article 10(1)(d) | Article 19 right to move freely throughout the territory of India |
| 6 | Right of own property and not be deprived of property (Art.17) | Article 19 (1)(f) (but it was omitted by the Constitution) (42th Amendment) ¹¹ |
| 7 | Right to freedom of opinion and expression (Art. 19) | Article 19(1)(a) freedom of speech and expression |
| 8 | Right to equal access to public service [Art.21(1)] | Article 16 equality of opportunity in matter of public employment |
| 9 | Art. 23 (1) Right to work, to free choice of an employment, to just and favourable conditions of work etc, | Article 41 right to work, education and public assistance in certain cases |
| 10 | Art. 23 (2) Right to equal pay for equal work conditions of work etc | Article 39(d) equal pay for equal work to both men and women |
| 11 | Art. 23 (3) Right to just and favourable remuneration | Article 43 living wages etc. for worker |
| 12 | Art. 25 (1) Right of everyone and a standard of living adequate for his and his family | Article 39 (a) and 47 right to adequate means of livelihood and duty of state to raise the level of nutrition and the standard of living and to improve public health respectively. |
| 13 | Art. 26 (1) Right to education and free education in elementary and fundamental stages | Article 21-A and 45 relating to educational rights and article 46 the state shall protect the interest of the weaker section especially SC/ST |
| 20 | Art. 28 Right to proper social order | Article 38 state secures a social order for the promotion of welfare of the people. |

Table 1

4. Weaker Sections in India

Traditionally Indian society was based on Hindu Varna system. According to that system there were four varnas arranged in hierarchical order with top position occupied by Brahmana followed by Kashatria and Vasia. Whereas at the bottom of that vertical order was Shudhras whose rights and duties were ascribed. No one can move either downward or upward. The bulk of population was called untouchables in this system. These untouchables in the present political system are called as scheduled castes. They were treated inhumanely like chattels by the upper strata. Not only this rather various evil practices were prevailing in the Indian society like untouchability, child marriage, sati pratha etc. The scavenging was done by these untouchables manually. In other words we can say that a section of the population comprises of schedule caste, schedule tribe, women, child, labour class, manual scavengers' dalits etc in the society is called as weaker section. They had to face inhuman treatment and to bear the ample violations of their human rights in India in the form of untouchability, practice of sati pratha, the untouchables were forced to remove the dirt from the public street and were not allowed to enter the public places. The young child was married at earlier state of their life etc. Due to these evil social practices their political, social, and economic conditions were very bad. It is very sad to say that these ill practices still prevail in India even after more than six decades of the operation of the Indian constitution. Sometimes human rights violations of this section become head news for the media. In this concern a Study Group headed by Shri Jayaprakash Narayan constituted by the Government of India which was asked to look into the condition of the weaker sections of the rural community which sought to upset the apple cart by asking the Government "to guarantee employment to every citizen who is prepared and fit to do manual labour." Dalit at the bottom of Indian's caste system is one of the constituents of the weaker sections lives a precarious existence and shunned by much of Indian society because of their rank as untouchable.¹²

¹¹Right to property still exist as fundamental right in the state of Jammu and Kashmir because 44th Constitutional amendment, 1978 is not applicable in this state due to special status under article 370 of the Indian Constitution

¹²Smita Narula, Broken People: Caste Violence Against India' Untouchable(1997)

5. Law and Social Change

There is direct relation between law and society. The need for new laws arises only when there is a change in the existing pattern of the society. Law has to protect society for the smooth functioning and if it fails to keep pace with the society the security of life and property prejudiced. Existing old laws become deadwood/functionless as a result we have frame new which is a continuous process.

Change in the existing pattern of social life is known as social change. As per Gainsberg a change in the social structure. Whereas expression "social structure" means nature, behaviour relations, social organization and community of people or change in social order. Law is a mean of social change has to play two fold roles first to keep up stability and afford orderly life in the society Secondly to persuade social change by changing itself according to the needs of the changing society. Thus law is an important agency of social control. Society shapes the law for better most socialization. There are certain groups in the society which often encounter discriminatory treatment and need special attention to avoid potential exploitation.

Such group of population is sometime referred to as Vulnerable Groups.¹³ They are at disadvantaged as compared to others mainly on account of various factors like political power sharing reduced access to medical services and the underlying determinants of health such as safe and potable drinking water, nutrition, housing, sanitation etc. For example, persons with disabilities often don't get employment except few seats reserved for them as per their disability or adequate treatment or people living with HIV/AIDS, face various forms of discrimination that affects their health and reduces their access to health services. The vulnerable groups that face discrimination include Women, Scheduled Castes (SC), Scheduled Tribes (ST), Children, Aged, Disabled, Poor migrants, People living with HIV/AIDS and Sexual Minorities. Sometimes each group faces multiple barriers due to their multiple identities. For example, in a patriarchal society, disabled women face double discrimination of being a women and being disabled. The structural norms are attached to the different relationships between the subordinate and the dominant group in every society. A group's Status may for example, be determined on the basis of gender, ethnic origin, skin colour, etc. These norms act as structural barriers giving rise to various forms of inequality.

6. Weaker Sections versus Human Rights Violations

- Untouchable/scheduled caste/dalits: they were subject to the practice of untouchability as a result they were forced to various disabilities e.g no access to public place of utility etc. They were kept away from their political and civil rights.
- Women used to burn with their husband in case of Hindu , confined to household, subject to domestic violations etc. and now various ill treatment e.g. sexual abuse at work places and dowry deaths and subject to cruel treatment by their in-laws.
- In case of children the incidents of no schooling at earlier age, child marriage, child labour, child abuse etc
- Scavengers, manual scavenging of dirt from streets or other places which cases ill effect on their health. More over the mare considered as untouchable.

It is pertinent to mention here that human rights have never shown any kind of discrimination towards any individual or group of people. They apply equally to any country or culture without any bias on grounds of sex, race, religion, caste or community and language. They only advocate the welfare and well-being of all persons with equal treatment everywhere at all times. However, the socio-economic, political and cultural diversities, prevailing in each state across the world, and politics of the nation states, deprive the free exercise of human rights to a certain number of people. Any type of deprivation, which has a direct bearing on the right to life and dignity of people, certainly deprives them of the enjoyment of their guaranteed human rights. Such deprived people are normally referred to as vulnerable groups and disadvantaged communities or groups.

6.1. *Following are a few legislations especially meant for the protection of weaker sections of the society passed by the Indian parliament*

- **The protection of Civil rights Act, 1955:** Passed by parliament¹⁴ to implement the fundamental right¹⁵ which abolished the practice of untouchability and declared it as offence punishable by law. It proved a strong weapon in the hands of this section for their defence to enjoy dignified life. **The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989:** The main objective of the Act is to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto with its enforcement from 31-1-90. The Act, inter alia, specifies some types of offences as atrocities, provides for imposition of stricter penalties for the guilty.
- **Suppression of Immoral Traffic Act, 1956:** with an aim to implement article 23 of the Indian Constitution later on this legislation amended to retitile it as prevention of immoral traffic Act, 1956
- **Bonded Labour (Prohibition) Act, 1976** The Bonded Labour System (Abolition) Act, 1976 abolished all agreements and obligations, including customary sanctions which permit bonded labour system in various forms. The Act also released all such labourers from these obligations, cancelled their outstanding debts and prohibited creation of any new bondage agreement. The Act also mandatorily provided for economic rehabilitation of freed bonded labour by the State. Keeping a

¹³ The Centre for Enquiry into Health and Allied Themes (CEHAT), Mumbai, 2007 pp. 1-9

¹⁴ Article 35, The Constitution of India

¹⁵ Ibid. article 17

bonded labour is a violation of law and is punishable with sentence of 3 years imprisonment and a fine of Rs. 2,000/- Ministry of Labour operates a centrally sponsored scheme for rehabilitation of released bonded labours.

- **The Minimum the Minimum Wages Act, 1948:** This Act provides for fixing of minimum rates of wages in different employments and appointment of Committees or Subcommittees for this purpose. The Act also fixes the norms of hours of work, rest and overtime rates. The machinery for enforcement of the Act has also been provided
- **Equal Remuneration Act, 1976:** The Act mandates that there shall be no discrimination in the payment of wages to women workers performing same or similar nature of work as men.
- **Child Labour (Prohibition and Regulation) Act, 1986:** The Act prohibits the engagement of children in certain employments and regulates the conditions of work of children in certain others. It outlines severe penalties for those violating its provisions. The Act also provides for a Child Labour Technical Advisory Committee to advise the Central Government on which occupations and industrial processes the employment of child labour should be prohibited.
- **National Commission for Women Act, 1990:** Section 3 of National Commission for Women Act, 1990 provides for the constitution of National Commission for Women to investigate and examine all matters relating to safeguards provided for the women under the Constitution and various other laws.

Maternity Benefit Act, 1961

Sati Prevention Act, 1987

National Commission Safie Karmchari Act, 1993

National human rights commission, Act 1993

Right to Education Act, 2010

- **The Prohibition Employment as Manual Scavengerings and Their Rehabilitation Act, 2013**

7. An Overview

Manual scavenging is historically linked to the practice of untouchability and the continuation of such practices is forbidden under the Constitution of India (Article 17). The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 prohibits the engagement or employment of persons for manually carrying human excreta and further prohibits the construction or maintenance of dry latrines. However, it has not seen a single conviction in the 19 years that it has been in force. It was passed by both Houses of Parliament on September 7, 2013 as The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013.

- **Its main objectives** are: - Prohibition of employment as manual scavengers. Rehabilitation of manual scavengers and their families and matters connected therewith and incidental¹⁶ The Act recognizes the link between manual scavengers and weaker sections of the society. It therefore, views manual scavenging as being violative of human right and more especially in India right to a dignified life constitutionally guaranteed to every citizen. Insanitary latrines and open drains or pits into which human excreta is disposed are included in the definition of a manual scavenger¹⁷. However, water flush latrines in railways that require cleaning by employees are not considered as insanitary latrines, if it is done with the use of protective gear. Employees can be employed on contract or regular basis, and hence this definition has a decently wide ambit Cantonment boards, Public Sector Undertakings, railways etc. have been recognized as 'appropriate government'. The Act first provides for identification of insanitary latrines by local authorities within their jurisdiction, who must publish the report and give a notice to the occupiers of the latrines. The occupiers would then be obliged, at their own cost, to either demolish them or convert them into sanitary latrines within six months from the date of commencement of the Act. If the occupier fails to do so, the local authority will convert the latrine and recover the cost from the former. Under chapter III, the Act prohibits construction of insanitary latrines and employment of manual scavengers. Section 6 of the Act renders void any agreement engaging a manual scavenger entered into before its commencement. The Act has a wider scope for higher penalties than what was provided under the 1993 Act. Offences under the Act are cognizable and non-bailable and may be tried summarily by executive magistrate rather than civil court. No civil court shall have jurisdiction under this piece of legislation. Further no interference by civil court in the form of interim injunction with any matter connected with the implementation of any provision of the Act. The Act seeks to wipe out the "social stigma" by arranging for alternative jobs and offering other provisions to those in such work and their families. More over during the skilled training program financial support in the form of stipend for an amount of three thousand per month.

8. Main features

- The Act prohibits the employment of manual scavengers, the manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines.
- The definition of 'manual scavenger' has been widened to include a person engaged or
- Employed, inter alia, for manual cleaning of human excreta in an insanitary latrine or in open drain or pit, railway tracks etc.

¹⁶Preamble of the Act, 2013

¹⁷ Ibid. Section 2(g)

- Express provisions for identification of manual scavengers and insanitary latrines. Further the obligation on local authority to construct community sanitary latrine
- Prohibition of hazardous manual cleaning of septic tanks and sewers, so as to ensure that Health and safety of such workers is not compromised.
- More stringent penal provisions for contravention of the new Act.
- Vigilance and monitoring Committees to be set up at the Sub-division, District, State and
- Central levels with representative of scheduled caste especially at respective committee.
- This Act has overriding effect on the earlier legislation on this subject as well as on other laws in force in India
- All offences under this Act are cognizable and non-bailable irrespective of the provision of Cr. P.C, 1973. It has a wider scope for higher penalties than the 1993 Act. Offences under the Act shall be cognizable and non-bailable and may be tried summarily. The penalty could be up to five years imprisonment.
- Power of judicial magistrate first class conferred on an executive magistrate to try summarily the any offence committed under this Act.
- Detailed provisions for rehabilitation of the manual scavengers who are identified in urban areas receive a photo identity card detailing Dependent family members. They are to be allotted a residential plot and assistance for Construction or a ready-built house, scholarship for children, training in a livelihood skill for him, and subsidy and concessional loan for taking up an alternative occupation. Legal and Programmatic assistance will also be provided as notified by the Central or State government.
- Manual scavengers in rural areas will also be rehabilitated *mutatis mutandis* as per the previous provisions relating to urban manual scavengers
- Provision for appointing inspector who can bound other to oblige as per section 175 and 176 of IPC
- National commission for safai karmchari can take suo motu cognizance in case of non-implementation of the provision of present legislation.

| Act of 1993 | Act of 2013 |
|--|---|
| Perspective: Sanitation perspective | Right to dignity perspective |
| Coverage 1993 Act only covers dry latrines under its ambit | Encompasses the sewage system, Railway tracks septic tanks etc. |
| Enacted under State list | Concurrent List |
| Focal points Prohibition of dry latrines | Addresses labour welfare and rehabilitation |

Table 2

9. Conclusion and Suggestion

These sections are said to be vulnerable and were not treated as human being before emergence of the British regime in India. In fact, some remarkable changes effected in their position. The commencement of the Indian Constitution abolishes kind of distinction/discrimination among the citizens/person and all are equal in eye of law which in terms has brought remarkable change in the lives of weaker sections. Part III and IV provided social equality, economic equality political justice for development of these people. Reservation policy though not successful completely, but is helpful to same extent for development of weaker sections. The practice of untouchability prohibited and its practice in any form is an offence punishable by law. Further for the protection of the weaker sections of the society various statutory provisions framed by the legislature both at national as well as at state level. Moreover the implementing agencies especially are there in India with notable successes in monitoring the protection of the weaker section. Supreme Court in the case¹⁸ observed “UDHR may not be legally binding instrument but it should show how India understood the nature of human rights the Constitution was adopted. The preamble of the 2013 Act state that the existing laws have not proved adequately. But after through discussion of the above mention legal provision and to eliminate the stigma of human rights violations of weaker section following steps should be taken:

The authorities shouldered with obligation to enforce the legal regimes for the protection of the weaker section should implement such norms in letter and spirit. The mass awareness complaining with aim to eliminate the social stigma like untouchability etc. More severe penalty who found guilty of such violations. So for the manual scavenging law is concern special court is to be established to deal with the issues of its violations. The guilty of offending the provision of this Act should be punished severely and wide publicity should be given to the decision of the court. Man force required for identification and rehabilitation of the manual scavengers should be appointed for better enforcement of the Act both at urban and rural. The construction of community sanitary latrines is the responsibility but no special provision for funds to local bodies. The provisions regarding rehabilitation of the manual scavengers should be implemented without any delay in letter and spirit. As per article 46 of the Indian Constitution obligation lies on the state to

¹⁸ Keshavananda Bharti v State of Kerla AIR 1973 SC 1510

protect the interest of the weaker section especially SC/ST, so in this direction the de-humanizing practice should be replaced by other alternative means. The weaker sections should provided protective measures in such a way that the many fold gaps be filled up Modern education and mass awareness to abolish all kind of discriminatory practices from the society so that human rights of this class be regarded and protected at all level. *“Nonetheless, we all agree that mere enactment of laws does not guarantee the eradication of the related problems. Proper implementation of the legislations is necessary to ensure that the intended beneficiaries get the optimum benefits. Further, to tackle the problems in a holistic manner, it is imperative to think and go beyond the legislative initiatives.”* -Blurb¹⁹

“I may not be born again ,if it happens, I will like to be born in a family of scavengers so that I may relieve them of inhuman, unhealthy and hateful practice of carrying head loads of night-soil” M.K. Gandhi²⁰

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