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Human Rights: Constitutional Provisions and Violations in Indian Perspective

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Abstract:

Attempt has been made to highlight the human rights, constitutional provisions in India and that how all the fundamental rights are being violated in India. Human rights refer to the basic rights and freedoms to which all the humans are entitled. Human rights violation is escalating day by day in the developing countries like India. The vulnerable sections like women, children, dalits, minorities and other groups are discriminated and abused frequently. In every sphere of life, these rights are being violated. Though Constitution of India guarantees the equality of rights to all yet there exists a wide gulf between theory and practice. Caste-based discrimination and neglect of tribal communities is an ongoing problem in India. Dalits still face economic, social, cultural and political discrimination in the name of caste. Indian society is a male dominated society. The women in India very often have to face discrimination, injustice and dishonour. Dowry deaths, child marriage, domestic violence, rape, sexual harassment, exploitation of women workers are rampant in different parts of India. Though women in India have been given more rights as compared to men, even then the condition of women in India is miserable. Abuses by the police and security forces including extrajudicial killings, torture, and corruption at all levels of government are the major human rights problems in India. Education of the girl child, framing relevant legislations, launching campaigns aimed to increase awareness and change attitudes about gender inequality may prove effective tools to improve the current state of affairs.

Keywords: *Human rights, constitution, provisions, violation, prevention*

1. Introduction

The theme for the Human Rights Day 2014 is "Human Rights 365", which is a slogan that will be adopted to mark the event. The theme encompasses the idea that every day is Human Rights Day. Human rights are essential components of sustainable development and are part and parcel of life in society. Rights are inherent in nature and their need has been felt in our society over the years. Human rights refer to the fundamental freedoms and basic liberties without which men, women and children can't live with respect and dignity. We all live in a society and all our activities revolve round this societal system. We all have ambitions and aspirations in life. Nevertheless, right to life, liberty and security are the basic rights which every man, woman and child must possess. People's rights are regulated by rule of law and it is the duty of the government to enforce and protect these rights and fundamental freedoms irrespective of their caste, creed, colour, race, sex, religion and place of birth.

Human rights ought to be the central focus of democratic governance in India. The constitution of India has provided a strong human rights framework reflecting the aspirations of the framers of the constitution who were at the vanguard of the freedom movement. When the constitution was adopted on November 26, 1949 by the constituent assembly, its members were mindful of the challenges of governance. Speaking after the completion of his work, Dr. B. R. Ambedkar, chairman of the constitution drafting committee, said "I feel that the constitution is workable; it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new constitution, the reason will not be that we had a bad constitution. What we will have to say is that man was vile". The members also recognized that the mere adoption of a good constitution would not culminate the values of the constitutionalism permeating the civil and political culture in the country, nor could it ensure good governance.

Human Rights Day is celebrated every year in order to address the issue of equality and the fact that every human on earth has the right to live with full dignity and justice. The universal declaration of human rights was unanimously adopted and proclaimed by the U.N. General Assembly on December 10, 1948. National Human Right Commission (NHRC) has also marked "Human Rights Day" on the 10th December 2010 and NHRC has been making sincere efforts to prevent violation of human rights.

2. Review of Literature

Not a single day passes, when the violations of human rights in India are not reported by the print media. It has become a global phenomenon and is increasing day by day in developing countries like India. The most vulnerable sections which are discriminated or abused are dalits, women, children, minorities etc. In every sphere of life, these rights are being violated. Each violation of human

rights, wherever it occurs is a great threat to the welfare and dignity of the human civilization (Guha Ray, 2001, Kethineni & Humiston, 2010).

Gochhayat (2013) investigated the violation of human rights of dalits in Odisha. The Hindu (2005) reported that situation is very pathetic in Odisha where some of the villages are not connected with all weather roads. No school facilities or public health centers have been started so far in many villages. There is poor state of electrification of the villages. Even safe drinking water is not provided in most of the villages. There is no post office in many of the villages.

Rasida Begum (2014) reported that women throughout the world live in a state of fear and deprivation. Therefore, any attempt to assess the status and problem of women in a society should start from the social framework, social structure, cultural norms and value systems are crucial determinants of women's role and their position in the society. Mangoli & Tarase (2010) studied the violation of human rights by the police personnel. It has been observed that state and local politicians often interfere in police operations, sometimes direct police officers to drop investigations against people with political connections, including known criminals, and to harass or file false charges against political opponents. These practices corrode public confidence in law.

Silva and Marwaha (2011) reported that more than 10,000 individuals were allegedly killed or disappeared during counter insurgency operations conducted by Indian security officials against suspected Sikh militants in Punjab. Waghmode et al (2013) investigated violence against women including physical aggression, sexual abuse, and psychological violence. Dhanoa (2012) studied the violation of human rights against women in various cities of India and ranked Delhi as most dangerous cities in India in terms of crimes against women. Bhattacharyya (2015) reported violation of women human rights in Tripura state.

Kumar (2014) highlighted that issue of human right violation in reference to Jammu and Kashmir and reported the untold miseries of the oustees during construction of Baglihar dam. Author also studied the problems of evacuation and rehabilitation of the people leading to violation of human rights. Human rights violation is a deep rooted problem. Education of the girl child, framing stringent legislations, campaigns aimed to increase awareness and change attitudes about gender inequality may help us to improve the prevailing chaotic situation.

3. Objectives of the Study

The major objectives of the present study are:

- i. To study the constitutional provisions and initiatives taken by government for protecting the rights of women, minorities, scheduled castes and scheduled tribes.
- ii. To examine the trends of different forms of human right violations and causes behind these violations.
- iii. To investigate certain gender specific human rights violations such as crime against women in context of India.
- iv. To know the torture and violation of human rights by police in India and to understand the main causes behind such barbaric incidents by police.
- v. To know the existing laws at the national level to curb and control such incidents and also to know whether the existing laws are effective in preventing such violations by police.
- vi. To study the role of education in promotion and protection of human rights.
- vii. To provide suggestions for the prevention of violation of human rights.

The study is aimed to determine the role and responsibilities of the police and the judicial system towards the innocent citizen of India, who is the victims on account of violation of human rights It has, therefore, become highly desirable to aware the general public and to sensitize our justice and administrative system to find out some concrete solutions against the existing problems of human rights violations.

4. Methodology and Data Collection

The methodology of this paper is descriptive and required information are collected from different secondary sources like newspapers, books, magazines, periodicals, research articles, internet survey and other publications relating to women rights, domestic violence , crimes against women and government documents etc. Statistical data of crimes against women, minorities, scheduled castes and scheduled tribes have been collected from National Crime Records Bureau, Ministry of Home Affairs, Government of India. The analysis and discussion of this paper is made on the basis of the collected information.

5. Human Rights: Constitutional Provisions

The constitution of India is known as one of the most right-based constitutions in the world. Indian constitution provides the spirit of human rights in its preamble and the sections on Fundamental rights and Directive Principle of State Policy. The Indian constitution is based on the theory that guided India's struggle against British colonialism, which was marked by the violation of civil, political, social, economic and cultural rights of the people. Therefore, after independence the framers of the constitution provided some fundamental rights to the citizens which are enshrined in the part III of the constitution. These fundamental rights are defined as basic human freedom for a proper and harmonious development of personality of every Indian citizen. These fundamental rights apply to all Indian citizens, irrespective of caste, creed, colour, sex, race or place of birth. They are also enforceable by the courts, subject to certain restrictions. The rights have their origins in many sources including England's Bill of Rights, the United States Bill of Rights and France's declaration of the Rights of Man.

The Constitution provides some Fundamental Rights to its citizens. The Fundamental Rights are included in Part III of the Constitution (Articles 12-35) (Kaur, 2006). These rights were finalized by a committee of the Constituent Assembly headed by Sardar Vallabhbhai Patel.

5.1. Nature of Rights

Human rights are vital for the development of the human personality, promoting an individual's dignity and welfare. The Fundamental Rights are not absolute; they are subjected to certain restrictions. The Fundamental Rights can be suspended during emergency.

5.2. Fundamental Rights

The Fundamental Rights included in the Indian constitution are guaranteed to all Indian citizens (Basu, 2006). There are six fundamental rights enshrined in the Indian Constitution. Right to equality is included in Articles 14, 15, 16, 17 and 18 of the Constitution. The Constitution of India provides the right to freedom, given in articles 19, 20, 21 and 22. In 2002, Article 21 (A) was incorporated by the 86th constitutional amendment act. The primary education has been made a fundamental right under the right to life and personal liberty. It says that "to the children in the age group of six to fourteen years shall be provided free and compulsory education" by the state.

Article 23 and 24 provides the right against exploitation. Articles 25, 26, 27 and 28 of the constitution cover the right to freedom of religion. The objective of this right is to maintain secular nature of Indian state. Article 29 and 30 provides special measures to protect the rights of the minorities. While article 29 applies to all the citizens of India, article 30 deals with the rights of minorities. The right to property is no longer a fundamental right, but a constitutional right. Article 31 provided that "no person shall be deprived of his property". The 44th constitutional amendment act of 1978 deleted the right to property from the list of fundamental rights. The Article 32 of the constitution deals with the right to constitutional remedies. It empowers the citizens to seek a court of law in case of any denial of the fundamental rights. These freedoms can be restricted in the interests of public order, morality and the sovereignty and integrity of India. Fundamental Rights are basic to a democratic polity, and with all the shortcomings of their enunciation in the Indian Constitution, their inclusion in the Constitution has protected the basic human rights of the individual well.

5.3. Directive Principles of State Policy

Part IV of the constitution (Article 36-51) contains the Directive Principles of State Policy (Basu, 2006). Most of them aim at the establishment of economic and social democracy. The Directives signify that the goal of Indian polity is a welfare state.

6. Human Rights Discourses in India

There are three major human rights discourse in the Indian context:

- i. Civil and Political Rights (Sastry, 2005)
- ii. Rights of the Marginalized (such as women, Dalits and Adivasis)
- iii. Economic, Social and Cultural Rights

6.1. Civil and Political Rights

Civil and political rights attempt to protect the individual from the misuse of political power and recognize a person's right to participate in their country's political process. They include freedom from slavery, torture and arbitrary arrest; freedom of thought, opinion and religion; the right to a fair trial and equality before the law.

6.2. Rights of the Marginalized

Rights of the marginalized are based on group rights, collective rights and people rights for the economic, social and political empowerment of the marginalized groups, like women, dalits, and adivasis (tribals). Several organizations raised voice against domestic violence, dowry, rape, custodial violence, trafficking, sexual harassment in work place or educational institutions and invisible labour of women in their household etc. There have been continuous efforts to describe and re-articulate the rights of dalits, tribals over natural resources etc. The movement like Narmada Bachao Andolan, the Fishworker's struggle and Dalit movements brought the issue of the marginalized communities into the mainstream political discourse in India.

6.3. Economic, Social and Cultural Rights

The major focus of Economic, Social and Cultural (ESC) Rights is the eradication of poverty and social development of the masses. These rights require a government to ensure that its people share in the economic wealth of the country, can participate in its social and cultural life, have access to adequate health care, education, social support and a clean environment and develop to their full potential. Law has also been made to protect people from racial discrimination and recognize the rights of specific groups of people, such as women, children and people with disabilities.

7. Implementation of Human Rights

There are numerous agencies which regulate and ensure implementation of above-said rights. Some of them are as follows:

7.1. National Human Rights Commission

National Human Rights Commission was established on 12th October, 1993 under the legislative mandate of the Protection of Human Rights Act, 1993. It aims to promote and protect human rights in the country. It focuses on the protection of human rights to all section of society, particularly the vulnerable or marginalized sections of the society.

The Commission divides the cases in these several categories: such as Custodial deaths, Police excesses (Torture, Illegal detention\unlawful arrest, false implication etc., Fake encounters, Cases related to Women and Children, Atrocities on Dalits\Members of Minority community\ Disabled, Bonded labour, Armed forces\ para military forces and other important cases (National Human Rights Commission website).

7.2. National Commission for Minorities

The NCM is a body constituted by the Government of India to monitor and evaluate the progress of people classified as minorities by the Indian government.

7.3. National Commission for Women

It is a statutory body for women in the Indian Union. The Commission is established under specific provisions of the Indian Constitution (National Commission for Women website). It provides a voice for the problems faced by the women. They have actively worked and campaigned against injustices, which hampers the human rights of women, such as dowry, equal representations for women in jobs, politics, religion, domestic violence, rape, sexual harassment in work place or educational institutions and the exploitation of women in labor.

7.4. National Commission for Scheduled Castes and Scheduled Tribes

The 65th Constitution Amendment Bill 1990, provides a statutory National Commission Scheduled Castes and Scheduled Tribes, which was later bifurcated into National Commission for Scheduled Castes and National Commission for Scheduled Tribes by the 89th Constitution Amendment Act 2003.

7.5. Indian judiciary

Indian judiciary is playing an active role in implementing and protecting the basic rights of its citizens. The court is also providing a platform for the state, civil society organizations, activists or institutions of human rights to engage in the scheme for realization and protection of human rights of Indian citizens.

8. Human Rights Violation

According to the National Commission of Human Rights of India, more than 62,000 human rights violations are recorded annually. On average, two dalits are assaulted every hour, three dalit women and children are raped, two dalits are murdered, and at least two dalits are tortured or burned every day. Most importantly, these violations are not only performed against dalits, but also on other minority communities in India. For the last few years, 159 Hindu masses have been directly associated with the human rights violations against Muslims, Christians and Sikhs throughout India. For instance, Hindus killed more than 3,000 Muslims in a Mosque demolition in 1992. In 1994, more than 4,000 Sikhs in the Delhi area were killed in Communal riots. In recent years, more than 2,000 Muslims in Gujrat and hundreds of Christians have been killed.

8.1. Violation of Civil and Political Rights

The emergency (1975-1977) is marked out by a black spot in the history of democracy in India. During that period most of the civil and political rights were suspended. Almost all the political opponents, activists and critique of the government were imprisoned. It was the period when every civil and political rights guaranteed by the constitution to the citizens were violated by the state. Custodial violence, arbitrary detention and police atrocities etc. caused the serious violation of human rights against the citizens of India.

The Sikh massacre in 1984, followed by the assassination of Mrs. Gandhi, raised serious questions about the role of the state in protecting the fundamental rights of the citizens. The communal violence in Gujarat (2002), where more than 2,000 people were killed and hundreds of homes and shops destroyed and looted, portrayed the inherent contradictions in the Indian polity and State. The recent ongoing human rights violation of Hindi-belt people in Assam and Maharashtra also portrays the negative picture of human rights situation.

8.2. Violation of Rights of the Marginalized (such as women and dalits)

8.2.1. Violence against Women

There is male domination in Indian politics and almost all the parties give very little support to women in election despite their vocal support for 33% reservation of seats for women in Parliament and Provincial Legislation. In most of the Indian families, women do not own property in their own names and do not get share of parental property. Due to weak enforcement of laws protecting them, women continue to have little access to land and property. In fact, some of the laws discriminate against women, when it comes to land and property rights.

The demand of dowry by the husband and his family and then killing of the bride because of not bringing enough dowry to the in-laws has become a very common crime these days. Though women in India have been given more rights as compared to men, even then the condition of women in India is miserable. The official statistics showed a declining sex-ratio, health status, literacy rate, work participation rate and political participation among women. While on the other hand the spread of social evils like dowry deaths, child marriage, domestic violence, rape, sexual harassment, exploitation of women workers are rampant in different parts of India.

Table 1 evidently highlights the situation of Indian women wherein the cases of rapes, domestic violence, dowry deaths are alarmingly high. There is urgent need to create awareness in rural areas about the rights, education and government services, and schemes for improvement of their status.

Year	Rapes	Domestic Violence	Dowry deaths	Total IPC Crimes against Women
2010	22,172	94,041	8,391	213,585
2011	24,206	99,135	8,618	228,650
2012	24,923	106,527	8,233	244,270
2013	33,707	118,866	8,083	309,546
2014	36,735	122,877	8,455	337,922

*Table 1: Reported violence against women in India during 2010-2014**
**Source: National Crime Records Bureau, Ministry of Home Affairs, India*

Discrimination against the girl child starts the moment she enters into the mother's womb. The child is exposed to gender differences since birth and in recent times even before birth, in the form of sex – determination tests leading to foeticide and female infanticide. Despite the improvement in the literacy rate after independence, there continues to be large gap between the literacy levels of men and women. Almost half the women population is even unable to recognize language characters. At least 60 million girls lack access to primary education in India.

Young girls in India often are the victims of rape. The law against rape is unchanged for the past 120 years. In rape cases, it is very torturing that the victim has to prove that she has been raped. The victim finds it difficult to undergo medical examination immediately after the trauma of assault. Wife beating, abuse by alcoholic husbands are the violence done against women which are never publicly acknowledged. Some rape victims were afraid to come forward and report the crime due to social stigma and possible acts of retribution, compounded by lack of oversight and accountability, especially if the perpetrator was a police officer or other official.

8.2.2. Crimes against Dalits

Dalit literally means a downtrodden which conveys the sense of an oppressed person. The dalits (also known as Untouchables, Harijans, and Scheduled Castes or Scheduled tribes) have historically been poor, deprived of basic human rights and treated as social inferiors in India. Human rights organizations, news and print media reveal countless stories of dalits who have been beaten, unlawfully detained, tortured, raped, killed and had their homes burned in caste violence. They still face economic, social, cultural and political discrimination in the name of caste as is evident from the data reported for the past 5 years in Table 2.

In view of the above, it seems that there is a need of the involvement of the Governmental and Non-Governmental Organizations (NGOs) to create awareness among the rural masses regarding their human rights.

Year	Scheduled Castes	Scheduled Tribes
2010	32,643	5,764
2011	33,719	5,756
2012	33,655	5,922
2013	39,408	6,793
2014	47,064	11,451

*Table 2: Total cases registered under crimes against scheduled castes and scheduled tribes in India during 2010-2014**
**Source: National Crime Records Bureau, Ministry of Home Affairs, India*

8.3. Human Rights Violation by Police

Human rights are being violated by police personnel due to police excesses such as illegal detentions, fake encounters, extortion, torture etc. The incidence of crimes registered against policemen for human right violation in India in the past 5 years i.e. during 2010-2014 has been reported in Table 3. The findings illustrate the government's failure in implementing the laws framed to prevent human right violation. It is very strange to see that Indian police violates human rights on the name of maintaining law and order in the society.

Year	Case Registered
2010	10,470
2011	11,171
2012	2,289
2013	1,989
2014	2,601

Table 3: Total cases registered against policemen for human right violation in India during 2010-2014*

*Source: National Crime Records Bureau, Ministry of Home Affairs, India

Providing a sense of security to ordinary citizens and attending to their grievances is dependent on the establishment of a police force which must be efficient, honest and professional. The need for police reform is self-evident and urgent as can be seen from the findings of various commissions and committees, the complaints received by the human rights commissions. Administrative steps must be taken to change the attitude of the police so as to make effective control of the violence.

The role and responsibilities of the police and the judicial system towards the innocent citizens of India must be assessed and analyzed in order to find the remedies and frame more stringent laws. Media often projected some of the cases as police are also now accepting bribes to kill the targets, motivated by senior police officers or politicians with vested interest. It clearly shows the hand in glove with the dirty politicians.

8.4. Violation of Economic, Social and Cultural Rights

Abuses by the police and security forces including extrajudicial killings, torture and rape, as well as corruption at all levels of government, are the most significant human rights problems in India. The world's largest democracy is also dogged by separatist violence, life-threatening prison conditions, sex trafficking of children and an atmosphere of impunity resulting from the overburdened judicial system

Caste-based discrimination and neglect of tribal communities is also a continuing problem in India. The awarding of the 2014 Nobel Peace Prize to activist Kailash Satyarthi spotlighted the fact that millions of children in India are still engaged in the worst forms of labor. Lack of accountability for security forces and public officials responsible for abuses perpetuates impunity and leads to further abuses. Police reforms are urgently needed to make the force more accountable.

According to the National Human Rights Commission (NHRC), Delhi trails only Uttar Pradesh and Haryana in the cases of human rights violations. Despite this fact, the Delhi government seems least concerned about constituting the state human rights commission. Most of the insurgency-hit states in the North-East do not have a human rights commission despite reports of frequent violations. The number of complaints received by the NHRC from the Capital has been on the rise in the last 5 years.

According to NHRC records, out of 22 state commissions, 10 are not functioning in a proper manner. They are either working without a permanent chairperson or with a few members. The NHRC has repeatedly sent requests to various state governments for setting up commissions but nothing has happened. There a need to have state commissions that are functioning with full strength but there should also be an evaluation of these commissions. Most importantly, the state governments should implement recommendations made by these commissions.

9. Recommendations

In view of above, it is highly recommended that there is an urgent need:

- i. To create awareness especially in rural areas to disseminate information on legal safeguards, constitutional provisions, rights, which is provided by the Constitution of India for women, dalits and minorities.
- ii. To strengthen the women empowerment program which is helpful for women to participate in economic activities and for upgrading women's skills.
- iii. To strengthen NGOs along with the women's organization who can play a great role to eradicate the discrimination prevailing in society
- iv. To emphasize on educating the female child. There is need to educate women about the scheme, services, health and accommodation which is especially for women.
- v. To promote media which can play a major role to organize awareness camps in the interior and remote areas to aware women about health education, family planning, their rights, affects of early marriage, importance of female education various schemes which is for women.

10. Conclusions

The widespread violation of human rights has become a matter of serious concern. The social condition is not conducive for the protection of human rights. The crimes against women have been increasing day by day in India. There is need of social awakening and change in the attitude of masses, so that due respect and equal status is given to women, children, dalits, and minorities. This awakening can be brought by education campaign among youth making them aware of existing social evils and the means to eradicate the same. So, Government and Non Government Organizations, and all the citizens of India should undertake proper steps for reducing and prevention of human rights violations.

While Indian Constitution provide every citizen some fundamental rights and has developed some institutions to deal with the gross violation of human rights, but at the same time there are incidents of basic human rights violations. It must be noted that human rights are necessary and essential condition for the holistic development of democracy and citizens for their overall progress in political, social and economic life.

Much of the provisions of the human rights are incorporated in the Constitution itself and the Supreme Court and High courts are made the guardian of the human rights. Mere statutory provisions for implementation of human rights as such are not adequate instead there is dire need to spread awareness among people. There are enough regulations and only thing is to implement it properly. There is need to create awareness in rural areas about the rights, education and government services, and schemes for improvement of their status which is provided specially for women, minorities, dalits etc. High character and moral strength would make the society courageous and free from anti- social activities.

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