

ESSAY SERIES - ESSAY 1

HUMAN RIGHTS IN INDIA

The concept of Human Rights as we understand today has its roots in the Universal Declaration of Human Rights (UDHR) of the year 1948 and the two Covenants based on it, namely the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). It will not be wrong to state that the above discussed human rights instrument have also attained the status of Customary International Law due to their universal ratification, thus, making them binding in all civilized legal systems. India is no exception to this proposition, in fact, the Part III of the Indian Constitution can be stated to be a clear reflection of the UDHR provisions. Moreover, human rights can be said to be a major driving factor and a key component of the Indian legal system, the nation having suffered years of suppression from the side of the colonial powers. The significance of human rights in India is so much so that any other law, passed by the legislation, has to pass the test of conformity with the Part III of the Constitution to remain enforceable.

It is, however, pertinent to note that successful protection of Human Rights in India can further be attributed to the Supreme Court of India, which utilised the provisions of the Part III of the Constitution, for evolving a jurisprudence unique to the Indian legal setup. The Supreme Court, in its various cases gave a wide and liberal interpretation to the Fundamental Rights to further evolve a multitude of other rights not expressly stated in the provisions. To explain this point further, the case laws pertaining to Article 21 can be analysed. The said article grants individuals residing in the Indian Territory the right to life and personal liberty. The Court, however, went a step ahead and has interpreted this provision to grant individuals a right to safe and healthy environment (Municipal Council, Ratlam vs. Vardichand), right to livelihood

(Olga Tellis vs. Bombay Municipality), right to speedy trial (Hussainara Khatoon vs. State of Bihar) and many other rights.

Another instance when the Supreme Court innovated legal principles keeping in mind the Indian socio-political circumstances is the doctrine of Absolute Liability as given in the case of MC Mehta vs. Union of India (Oleum Gas Leak Case). In the present case the court held the tort law principle of strict liability inappropriate and inadequate for compensating victims of industrial mis happenings and held that presence of defences for the same has the capacity to reduce the gravity of the circumstances and need to be done away with. The doctrine further proved to be helpful in Union Carbide vs. Union of India (Bhopal Gas Tragedy Case), wherein another multinational corporation attempted to escape legal liability for leak of poisonous fumes which resulted in death of many innocent individuals and injury to even more.

Moving ahead, a discussion on Human Rights in India would remain incomplete if Supreme Court's approach towards International Human Rights Instruments, other than the UDHR, ICCPR and ICESCR is not analysed. In this regard the most important case is Vishakha and Ors. vs. State of Rajasthan, in which the court relied upon the United Nations Convention on Elimination of Discrimination against Women (CEDAW) and held the same to be binding on the country, while laying down guidelines on sexual harassment of women in workplace. India is a member of the civilised world order and hence, has both a legal and a moral obligation to abide by the International commitments it undertakes. This is also in furtherance of the Article 51A of the Constitution, which lays down the Directive Principle of State Policy (DPSP) of respecting and abiding by International Law.

A discussion on Human Rights in India would remain incomplete if the Protection of Human Rights Act, 1993 is not analysed. The act has resulted in establishment of a specialised tribunal on Human Rights in India at both national and state level. It is a well-established fact that Part -III of the Constitution is the most prominent source on

Human Rights in India, it is, however, also true that the scope of Fundamental Rights is a lot more limited than the broader notion attached with the term 'Human Rights'. This fact makes the National Human Rights Commission (NHRC) important because of a wider subject matter jurisdiction. Moreover, it a characteristic feature of Fundamental Rights that it is only enforceable against the 'State' as defined under Article 12 of the Constitution. In the NHRC, however, this restrictive approach is not applicable and hence, a petition can be filed against private individuals involved in Human Rights violation.

In conclusion, it can be said that within the Indian legal system, there exists plethora of legal provisions in furtherance of protection of human rights. The courts in India have also adopted a proactive approach when it comes to effective protection of human rights and have even contributed a lot in how they are defined. It can, thus, be said that despite having their basis in international instruments like UDHR, Indian human rights have indeed established a unique and innovative position of their own.