Human Rights - Safeguards, Constitutional Provisions and Legislative Measures and Their Adequacy

Human Rights â€“ Safeguards, Constitutional Provisions and Legislative Measures and Their Adequacy
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It is too late to overemphasize or stress on the growing importance of the subject human rights and the different facets and dimensions thereof, both in the national and international spheres as well. The basic needs of the human beings are well recognized in almost every Constitution of the world and though the form or language may be different, the basic structure appears to be one and the same—the basic requirements and needs of the human beings.

The concept of human rights has assumed very great global importance, be that an advanced country, developed nation or underdeveloped country. The universal opinion is uniform relating to protection of human rights. Sir Hersch Lauterpacht was pleased to observe:

"The protection of human personality and of its fundamental rights is the ultimate purpose of all law, national and international."

The Universal Declaration of Human Rights, The UN Covenant on Economics, Social and Cultural Rights, the UN Covenant on Civil and Political Rights, the European Convention on Human Rights, the American Convention on Human Rights, Rules of Procedure of the Permanent Arab Commission on Human Rights, are a few which may be referred to in this context.

Shri A.H. Robertson in his Human Rights in the World had well dealt with the importance of human rights and the international protection to be given to such basic rights. The subject had been further dealt with elaborately in Human Rights in National and International Law, edited by Shri A.H. Robertson.

In Munn v. Illinois1 Field, J. observed that life means something more than mere animal existence and inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. In Baskey2 it was observed by Douglas, J. that the right to work is the most precious liberty because it sustains and enables a man to live and the right to life is a precious freedom.

Article 21 of the Constitution of India deals with protection of life and personal liberty. In Olga Tellis v. Bombay Municipal Corpn.3 it was observed: (SCC p. 572, para 32)

"The question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far reaching. . . . An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood."

In Consumer Education and Research Centre v. Union of India4 (AIR at p. 999) dealing with the expression "life", it was held: (SCC p. 68, para 22)

"22. The expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure."

Quality of life covered by Article 21 is something more than the dynamic meaning attached to life and liberty5 Right to life includes right to human dignity6 Right to live with human dignity enshrined in Article 21 derives life breath from the directive principles of State policy7 Right to free legal aid to the poor is a fundamental right8 Right to education is a fundamental right9 Right to life does not include right to die10

Article 21 of the Constitution contemplates procedure established by law and hence it is not easy to contend that by amending CrPC the effect of the procedure established by law in Article 21 can be taken away11 Right to life is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and therefore incompatible and inconsistent with the concept of right to life10. Calling for bandh is violative of fundamental rights of the citizens12 To be a member of a cooperative society is only a right conferred by the statute and not a fundamental right13 Testimonial compulsion cannot be applied except in a case where a person is compelled to be a witness against himself14 Criminal prosecution for offence under Section 138, NI Act is no ground to stay proceedings for recovery of amount based on dishonoured cheque15 The mere possibility of abuse of a provision by those in charge of administering it, is not a ground on which it can be held that the provision is procedurally or substantively unreasonable16 Being a member of a
cooperative society is a statutory right and not a fundamental right. Blacklisting of a contractor can be set aside by a writ court. Right to shelter forms part and parcel of fundamental right. Right to live includes all those aspects of life which go to make a man's life meaningful, complete and worth living. The management and control of traffic is a matter concerned with public safety and hence it will fall within the ambit of Article 21. The beauty contest in any form in its true sense of the term can be neither obscene nor prohibited under any law as long as it is intended only as a form of art and entertainment and in a way a sport to select the winners on comparative merit. Since right to life is more than mere animal existence, tribals have a right to social and economic empowerment. Where fundamental rights of petitioners under Article 21 have been violated by the tortuous acts of the State or its servants, constitutional courts can grant relief of compensation. Since the prison system is afflicted by nine major problems like overcrowding, delay in trial, torture, ill-treatment, neglect of health etc., observations were made and appropriate directions have been given. It is now settled law that right to health is integral to the right to life. The Government has a constitutional obligation to provide health facilities. Medical facilities to workers are constitutional, fundamental and human rights. Where there was a mysterious tragic abduction and alleged murder of an advocate, his wife and child, it was held that the State is liable to pay compensation to the parents. Right to shelter also falls within the ambit of Article 21 of the Constitution. Prison officials are expected to ensure the life and safety of every person in jail including convicts. Where timely medical treatment was not provided to a person in need of the same by a government hospital, it was held that it is violative of his right to life. In Phoolawanti v. State of Punjab it was held that in case of terrorist violence and death of the victim, ex gratia grant cannot be denied on the ground that the deceased was employed.

Economic empowerment is a basic human right and also a fundamental right. Right to vote is subject to limitations imposed by the statute. It can be exercised only in the manner provided by the statute. The challenge to any provision in the statute prescribing the nature of right to vote cannot be made with reference to fundamental right in the Constitution. Reservation for Scheduled Castes and Scheduled Tribes is a constitutional policy and hence it is the duty of the Government and the public servant to implement the same. Reservation is a constitutional policy and hence it is the duty of the Government and the public servant to implement the same. The presumption is in favour of the constitutionality of a legislative enactment and it has to be presumed that a legislature understands and appreciates the needs of its own people. In State of A.P. v. McDowell & Co. the Apex Court while dealing with the administrative action and judicial review, laid down that the scope of judicial review in case of administrative action is limited to three grounds: (1) unreasonableness which more appropriately be called irrationality; (2) illegality; (3) procedural impropriety. In K.R. Lakshmanan (Dr) v. State of Madras it was observed that under Article 14 guarantee of equity before law is a correlative to the concept of rule of law for all-round evaluation of healthy social order. In Gursharan Singh v. New Delhi Municipal Committee it was observed that the claim in public law for compensation for any constitutional deprivation of fundamental rights of liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortuous acts of the public servants. In People's Union for Civil Liberties v. Union of India it was held that the right of privacy by itself has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially and whether right to privacy can be claimed or has been infringed in a given case would depend upon the facts of the said case but the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as right of privacy. In Dalmia Cement (Bharat) Ltd. v. Union of India it was observed that Article 14 of the Constitution is a shining star among the fundamental rights which guarantees equity to every citizen and equal protection of laws to all persons and equality before law is a correlative to the concept of rule of law for all-round evaluation of healthy social order. In Gursharan Singh v. New Delhi Municipal Committee it was observed that Article 14 guarantee of equity before law is a positive concept and it cannot be enforced by a citizen or court in a negative manner. In K.R. Lakshmanan (Dr) v. State of T.N. it was observed that the presumption is in favour of the constitutionality of a legislative enactment and it has to be presumed that a legislature understands and appreciates the needs of its own people. In State of A.P. v. McDowell & Co. the Apex Court while dealing with the administrative action and judicial review, laid down that the scope of judicial review in case of administrative action is limited to three grounds: (1) unreasonableness which more appropriately be called irrationality; (2) illegality; (3) procedural impropriety. In Gian Kaur v. State of Punjab it was observed that right to live is a natural right embodied in Article 21 but suicide is an unnatural termination or extinction of life and therefore incompatible and inconsistent with the concept of right to life. In Surjit Singh v. State of Punjab it was held that self-preservation of one's life is the necessary concomitant of the right to life enshrined in Article 21 of the Constitution of India, fundamental in nature, sacred, precious and inviolable.

In Murli S. Deora v. Union of India it was held: (SCC pp. 766-67, para 2)

Fundamental right guaranteed under Article 21 of the Constitution of India, inter alia, provides that none shall be deprived of his life without due process of law. A non-smoker is afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places. It is indirectly depriving of his life without any process of law. Undisputedly, smoking is injurious to health and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. In any case, there is no reason to compel non-smokers to be helpless victims of air pollution.

Article 20 of the Constitution of India deals with protection in respect of conviction for offences. Likewise, Article 22 deals with protection against arrest and detention in certain cases. Article 23 deals with prohibition of traffic in human beings and forced labour. Articles 25 to 30 deal with right to freedom of religion. Article 20(2) incorporates within its scope the plea of "autrefois convict" as known to British jurisprudence or the plea of double jeopardy as known to the American Constitution but circumscribed it by providing that there should be not only a prosecution but also a punishment in the
first instance in order to operate as a bar to a second prosecution and punishment for the same offence. The ambit and contents of the guarantee are much narrower than those of the common law rule in England or the doctrine of "double jeopardy" in the American Constitution. The principle upon which the right to plead autrefois acquit depends is that a man may not be put twice in jeopardy for the same offence. This principle is incorporated in Article 2044. The principle of issue of estoppel is different from the principle of double jeopardy or autrefois acquit as embodied in Section 403 (at present Section 300 CrPC).

Article 20(3) embodies the principle of protection against compulsion of self-incrimination which is one of the fundamental canons of the British system of criminal jurisprudence and which has been adopted by the American system and incorporated as an article of its Constitution. The guarantee in Article 20(3) in substance is against testimonial compulsion. In order to claim benefit of the guarantee against testimonial compulsion embodied in Article 20(3) it must be shown (1) that the person who made the statement was "accused of any offence"; (2) that he made that statement under compulsion; (3) a person against whom an FIR is lodged alleging offences, is a person accused of an offence within the meaning of Article 20(3). Article 20(3) can be invoked in a case where the statement in question was made by a person at a time when he was accused of an offence. In Balkishan A. Devidayal v. State of Maharashtra it was observed by His Lordship Sarkaria, J., that determination of the issue whether a person is said to be an accused for any offence will depend on whether at the time when the person made the self-incriminatory statement, a formal accusation of the commission of an offence had been made against him. Section 161 CrPC no doubt enables the police to examine the accused during investigation but the prohibitive sweep of Article 20(3) goes back to the stage of police interrogation, not commencing in court only. (See Nandini Satpathy v. P.L. Dani) Where a customs officer arrests a person and informs that person of the grounds of his arrest there is no formal accusation of an offence. When a person is called upon under Article 240 of the Companies Act to give evidence and produce documents he cannot be said to be a person accused of any offence within the meaning of Article 20(3). To be a witness is not equivalent to furnishing evidence. In State of Bombay v. Kathi Kalu Oghad it was held: (AIR pp. 1816-17, para 16)

16. In view of these considerations, we have come to the following conclusions:

(1) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in any enquiry whether or not the accused person had been compelled to make the impugned statement.

(2) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not "compulsion".

(3) "To be a witness" is not equivalent to "furnishing evidence" in its widest significance; that is to say, including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.

(4) Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression "to be a witness".

(5) "To be a witness" means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise.

(6) "To be a witness" in its ordinary grammatical sense means giving oral testimony in court. Case-law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in court or out of court by a person accused of an offence, orally or in writing.

(7) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made."

The right guaranteed under Article 20(3) does not extend to a total exemption from appearing before any authority who summons for recording evidence but is restricted to compelled testimony.

The right guaranteed by Article 25 is an individual right as distinguished from the right of an organized body like a religious denomination of any section thereof dealt with by Article 2655 The protection of these articles cannot be limited to matters of doctrine or belief, they extend also to acts done in pursuance of religion and therefore contain a guarantee for rituals and observances, ceremonies and modes of worship which are an integral part of religion. What constitutes an essential part of a religion or a religious practice has to be decided by the courts with reference to the doctrine of a particular religion and includes practices which are regarded by the community as part of its religion. Articles 25 and
26 are based for the most part upon Article 44(2) of the Constitution of Eire. Our Constitution-makers have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of Articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not. The principle that there must be separation of the Church from the State is not consistent with the constitutional provisions of India. In fact these articles emphasize the aspect of religious tolerance.

Article 25 is an article of faith in the Constitution incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. While Article 25 confers the particular rights on all persons, Article 26 is confined to religious denominations of any section thereof. (See S.P. Mittal v. Union of India)

Religion is a matter of faith with individuals or communities and it is not necessarily theistic. The expression "matters of religion" in Article 26(b) embraces not merely matters of doctrine and belief pertaining to the religion but also the practice of it.

Articles 26(c) and (d) merely safeguard and guarantee the continuance of rights which a denomination of its section had. If the right to administer properties never vested in the denomination or had been validly surrendered by it or has otherwise been effectively and irrevocably lost to it Article 26 cannot be successfully invoked. The distinction between clauses (b) and (d) strikes one at once. So far as administration of its property is concerned, the right of a religious denomination is to be exercised in accordance with law but there is no such qualification in clause (b). The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away whereas the former can be regulated by laws which the legislature can validly impose.

Matters of religion in Article 26(b) include even practices which are regarded by the community as part of its religion. The distinction between matters of religion and those of secular administration of religious properties may, at times, appear to be a thin one. But in cases of doubt, the court should take a common-sense view and be actuated by considerations of practical necessity.

Citizenship is an essential condition to claim protection under Article 29 unlike under Article 30(2) of Article 29 in fact saves the cultural and educational rights of any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own. Article 29(2) specifies that no citizen shall be denied admission in any educational institution maintained by the State or receiving aid out of State funds on grounds of (1) religion, (2) race, (3) caste, (4) language, or (5) any of them. Religious or linguistic minorities should be determined only in relation to the particular legislation which is sought to be impugned, namely, that if it is the State Legislature, then the minorities have to be determined in relation to the population of the State. The right to get admission in any educational institution of the kind specified in Article 29(2) is a right which an individual citizen has as a citizen and not as a member of any community or class of citizens. In C.N. Prasad v. G.M. Sanghi College of Commerce on the aspect of minority institution, His Lordship P.A. Choudary, J., held that in the absence of autonomous and separate intent of minority community it cannot be said to be a minority institution.

Article 30(2) mandates that the State shall not discriminate against any educational institution on the ground that it is under management of a minority and the State is under an obligation to maintain equality of treatment in granting aid to educational institutions. Minority institutions cannot be asked to maintain themselves without State aid.

In Manager, St. Thomas U.P. School v. Commr. and Secy. to General Education Deptt it was held that a school established by a single philanthropic individual with his own means can also be treated as a minority institution.

The Protection of Human Rights Act, 1993 (Act 10 of 1994) is an Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human rights and for matters connected therewith or incidental thereto. Chapter II deals with the National Human Rights Commission, Chapter III deals with functions and powers of the Commissioner, Chapter IV deals with procedure, Chapter V deals with State Human Rights Commissions, Chapter VI deals with Human Rights Courts, Chapter VII deals with miscellaneous. The different provisions of the said Act are self-explanatory and they need not be dealt with in detail for the present context.

Certain other legislations which may be referred to in the context of human rights can be specified as hereunder:


Justice V.S. Malimath on the "Role of Human Rights Commission" had stated:

"National Human Rights Commission of India is one of the most effective Rights Commissions in the world which has established its credentials as a statutory independent body within a short span of one year. There was a growing awareness in the society about the human rights and the people want to seek redressal of various kinds of abuses including child abuse and custodial deaths. The Commission till date has received more than 5000 complaints which have been attended properly. The daily average of complaints received by the Commission varied from 50 to 60. The complaints poured in from all parts of the country from individuals and organizations. The Government cannot wash away the recommendations made by the Commission. The Commission's role might be recommendatory, advisory, yet the Government considers the cases forwarded by it."

Justice Ranganath Misra had observed:

"Violence is spreading faster than culture of discipline and this tendency needed to be checked and non-violence encouraged and promoted in our society as was done by Mahatma Gandhi more than 50 years ago. Violence is a killer of human rights. The National Human Rights Commission is making use of all the channels including education to spread a message of human rights in the society and bring about attitudinal change for respect of these rights. Cumulative efforts have to be made to reduce violence through spread of discipline, better culture, better education and introducing in our society better conduct for human rights which is in consonance with the requirement of these rights. The development of a culture of human rights is the ultimate goal of the National Human Rights Commission. The preamble of Universal Declaration of Human Rights and other treaties speak about a family of human beings free from quarrels and disputes. This is possible only when we develop a culture of human rights. The conduct of man is not regulated by law. I contest the view that human conduct is regulated by law. This is not demonstrated either by practitioners of law or the society where law is very much in spread. This is because these principles and conduct must be disciplined and regulated if it is practised with human beings. Conduct of discipline cannot be done by law, Parliament, or the courts etc. This could only be made effective by compulsion of a situation."

As already stated supra, the concept of human rights became a concern of universal importance. Ours is a multi-linguistic, multi-religious complex society. We have several particular problems of our own including the problems of women, children, minorities peculiar to our Indian society. I have been always speaking about legislations in theory and legislations in practice. As far as certain social problems are concerned, mere legislations cannot bring the change though they may operate as a threat and there must be change in the society itself, a social reformation as I can put it. Untouchability and dowry prohibition can be cited as examples. Confrontation between communal or religious fanaticism v. secularism in this country is yet another problem which ultimately may have serious impact on basic human rights. Terrorism is yet another serious problem posing a threat to invasion of human rights. The examples referred to supra are only illustrative and not exhaustive. The statutory provisions as such cannot be said to be insufficient, but however, several of the legislations are not legislations in practice and the failure to implement them is on account of major sections of the society's disinterestedness in having them implemented in strict letter and spirit. Let us hope that the Indian society will well receive such changes and will give a nod of approval, which I call as "social approval" in the larger interest of the Indian society and the nation as well.