

## 9. Human Rights and Democracy: India's Experience

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### Abstract

During the last six decades, human rights have become a live and vibrant issue in the free world. Human rights as the recognition of inherent and basic individual worth and dignity are as old as human civilization. An individual attains by birth some rights as human being. Thus the idea of human rights is civilization as it is a political idea with moral base. The concern for and of human rights has been institutionalized after General Assembly of UN adopted and proclaimed the Universal Declaration of Human Rights in the mid twentieth century. The expression "human rights" suggests rights of all human beings. The moral foundation of human rights to universality has not been questioned yet at least in principle, though there are some instances of rejection to this aspect of universality, either manifest or disguised, are fairly large in all parts of the world. The idea of democracy has led to great expectations to the people. It has become a key point of political legitimacy. In fact it is producing the greatest disillusionment and frustration recently. From the late 19<sup>th</sup> Century democracy and capitalism appear to have moved along independent yet parallel paths. During the 20<sup>th</sup> Century they gained in strength, interacting mutually and establishing an interface. The result of which the concept of welfare state emerges, defines the role of the state in an interventionist manner. On representative democracy Benjamin Barber says, 'Representations destroys participation and citizenship even as it serves accountability and private rights.' Indian Constitution, the most right-based Constitution of the world, provides ethical foundation of human rights in its Preamble, while the legal expression of these found in Part-III and part-IV of the Constitution.

**Key words:** Human Rights, Democracy, Constitution, violence, crime, corruption and India.

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**Full Text:****Introduction:**

It is necessary for human beings to evaluate the meaning and definition of the concept of human right. Human Rights are universal, and they apply equally to all human beings whatever their inborn or acquired differences may be. As human beings are rational, they possess certain rights which are commonly known as human rights. Human rights belong to the individuals from very inception of their birth, these rights become operative. Human rights are birth rights inherent to all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are absolutely essential as these rights are concerned with freedom and dignity of people and are related to physical moral, social, and spiritual welfare. These rights are also essential for moral and material development. Human rights are also referred as fundamental rights, basic rights and birth rights as of immense significance to human beings.

The concept of justice and concept of human rights are inseparable. Justice is closely related to human rights. Human rights not only uphold human dignity and worth but also affirm an honored life to each individual. To human beings there is a life to live but live without dignity, life becomes meaningless. But unfortunately some structures prevailing in the society do not permit people to live with dignity or to affirm rights. The dominant forces in the society try to explain human rights from their own perspective, which is selfish and injustice. So, for the proper utilization of human rights, the transformation of the structure is essential. This will lead to the proper dissemination of justice, as the denial of justice is denial of human rights.

**Objectives:**

The present study was carried out with the following aims and objectives:

1. To make a comparative study of democratic values and human rights in India.
2. To examine democratic rights of the people of India.
3. To analyze future of democracy in global perspective.

4. To observe the close relationship between globalized democracy and human rights.
5. To observe democracy as one of the salient of human rights.
6. To examine electoral process and democratic set up in India.
7. To observe criminalization of politics and lack of good governance in India.
8. To find out Scams and Corruptions in Indian democracy.
9. To oversee present status of women and children in India.
10. To assess the outbreak of communal and ethnic violence in India.
11. To examine the effectiveness of RTI – great achievement of Indian democracy.
12. To analyze the Sectarian violence in different states in India.

The constitution of India contemplates the parliamentary form of government and ensures the establishment of a sovereign, socialist, secular, democratic republic in the country. The constitution also guarantees to the citizens of India some fundamental rights. Indian Constitution is one of the most right-based constitutions of the world. It provides the ethical foundation of human rights in its Preamble, while the legal expression of these found in Part-III and Part-IV of the Constitution where the fundamental rights and Directive Principles of State Policy described respectively. The Preamble of the Indian Constitution aims to secure to all citizens justice-social, economic and political; liberty of thoughts, expression, belief, faith and worship; equality of status and opportunity and to promote among all fraternity assuring the dignity of the individual. The Constitution of India also guarantees fundamental rights to all citizens without any discrimination on any ground in Part-III. It deals mostly civil and political rights. There are also a set of Directive Principles of State Policy which functions as guiding principle for the government to run administration.

The parliamentary form of government under democracy is representative democracy in which people of the country are entitled to exercise their sovereign authority through the legislature, the member of which are elected on the basis of adult franchise.

There is a close relation between globalized democracy and human rights. Democratic participation is in fact one of the human rights, where in the less explicit form that it takes in Article 21 of Universal Declaration of Human Rights or in details in Article 25 of the International Covenant on Civil and Political Rights, although it is regrettable to say that neither the articles use the term 'democracy' itself. At the level of human rights, democracy is compatible with these rights where democracy is one of the salient of human rights.

It is known to all that democracy is based on free debate and open discussion. If democracy means government of the people, by the people and for the people then it is obvious that every citizen must be entitled to participate in the democratic process. Without mass participation the democracy loses its true essence.

The ends of government, according to modern view, are to ensure security, welfare and happiness of the people. There can be no democratic regime where people do not enjoy the basic civil rights and liberties, though some instances are there where democracies turn into authoritarianism.

### **Democratic process and electoral system**

Free and fair election, freedom of thought, expression and press and independence of the judiciary-these are the pillars of democracy. The process of election in democratic structures should be free and fair, otherwise democracy will lose its meaning and significance. If the election process is being polluted by any means, this will affect the essence of democracy. So, it is the duty of authority concerned to conduct and perform free and fair elections.

Democracy is a system of governance by the people's representatives, elected directly or indirectly. So, for good governance or for the betterment of democracy it is necessary that the best men having high moral and ethical values from the society should be chosen as people's representatives. There are so many elected members of the parliament, some of whom holding prestigious post like minister-ship, in India, engaged with social crime. According to latest News Paper Report (The Times of India and The Hindu) 14 ministers (30%) of present Council of Ministers have

criminal background. So, those who get elected to the parliament or to the state legislature must be perfectly well equipped to do the job they are expected when it is required. Otherwise Indian democracy will be led to a wrong direction.

## Right to Information

In a democratic country like India, every citizen must have awareness in relation to right to information. Modern welfare states exercise vast powers that may be misused for personal gains and harmful to the society. Right to information, after Right to Information Act, 2005 opens to get information about the authority, about government offices, people who are the ultimate decision makers must have all information regarding the government and governance for making a proper decision for the betterment of the people.

Administrative Reforms Commission (1966-70) submitted its first report recommending two-tiered machinery comprising the *Lok Pal* and *Lokayukta*, the former deal with complaints against Ministers and Secretaries to government at the centre as well as in the state. The *Lokayukta*, one for the centre and one for the state, should attend to complaints against the rest of the bureaucracy. The *Lok Pal* bill has a long history in India. It was first mooted in the parliament in 1968. During the period from 1968 to 2013, the bill was placed in the parliament for several times. It was introduced in 1971, 1977, 1985, 1989, 1996, 1998, 2001 and in 2011. Fifty two years after its first introduction the *Lok Pal* bill was passed by the both houses of parliament at the end of the year 2013. The bill was passed both in *Rajya Sabha* and *Lok Sabha* on 17 December, 2013 and 18<sup>th</sup> December, 2013 respectively. After getting assent from the President of India on 1<sup>st</sup> January, 2014 *THE LOKPAL AND LOKAYUKTAS ACT, 2013* came into force from 16<sup>th</sup> January, 2014. It is the first recognition in the famous case of *State of Uttar Pradesh v Raj Narain*, the Supreme Court of India recognize the citizen's right to know and help that in a responsible government where all the agents of the public must be responsible for their conduct, of course, there can be few but secrets. In another case *S.P. Gupta v. President of India*, justice Bhagwati, recognizes the right to know to be contained in the right to freedom of speech and expression. Thus right to know a basic right which citizens of

a free country desire in a broader perspective of the right to live in this age on our land under Article 21 of the Constitution.

The Preamble and Article 38 of the Constitution of India envisages social justice as the arch to ensure life to be meaningful with human dignity. Indian Constitution commands justice, liberty, equality and fraternity which are of extreme value and importance for the success of a democracy. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, Muslims, tribals and other deprived sections of the society and to elevate them to the level of equality to live a life with dignity. The concept of social justice is an indispensable part of the complex social change to alleviate the deprived sections to make life meaningful for the greater good of the society. State should ensure minimum facilities to enable them to reach at least minimum standard of life, health, food, drinking water etc. as Article 11 of the International Covenant on Economic, Social and Cultural Rights enshrines the right to an adequate standard of living, including adequate food and clothing and the 'continuous improvement of living conditions.' So without ensuring these rights in democracy like India life of human being becomes meaningless. Hence in a case of *Air India Statutory Corp. V. United Labour Union* the Supreme Court of India decided as right to justice and right to health were to be fundamental rights.

### **Corruption in Indian Democracy**

Corruption is the serious threat to the world's most populous democracy. Corruption and maladministration have become an integral part of our 'democracy'. India is ranked 94 among 177 countries/territories around the world with a score of 36 in the Corruption Perception Index (CPI), 2013 of the Transparency International. The index measures the perceived levels of public sector corruption in countries worldwide, scoring them from 0 (highly corrupt) to 100 (very clean).

### **Human Rights and women in India**

So far as domestic violence is concerned, it is a very common and serious problem in Indian society. Though the term violence against women is not well defined under

the Indian laws, the *Elimination of Violence Against Women* defines violence against women as :

*“Any act of gender based violence that results in , or is likely to result in, physical, sexual, or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty whether occurring in public or in private life.”*

According to the NCRB in every six hours, a young married woman is burned, beaten to death, or driven to commit suicide. A crime against a woman is committed every three minutes, one rape in every 29 minutes, one dowry death case in every 77 minutes and at last, one case of cruelty by husband and his relatives is filed in every 9 minutes. A total of 2,44,270 incidents of crime against women (both under IPC and SLL) were reported in the country during the year 2012 as compared to 2,28,650 in the year 2011 recording an increase of 6.4% during the year 2012. These crimes have continuously increased during 2008 -2012 with 1,95,856 cases in the year 2008, 2,03,804 cases in 2009, 2,13,585 cases in 2010, 2,28,650 cases in 2011 and 2,44,270 cases in the year 2012. A total of 24,923 rape cases were reported in the country during the year 2012. The majority of rape cases are never reported to the authorities. Singular crime of rape is the fastest growing and most alarming crime in India. This crime is increased by 902% over 1971 to 2012. Other crimes like – gang rapes, acid attacks, stalking etc. were recognized recently by the Criminal Law Amendment Act 2013. As crime like ‘honour killing’ , is still not recognized by law, no authentic data is available on that crime. Gender violence is of course not limited to rape. The official statistics for 2012 NCRB report that there occurred 8,233 dowry deaths (section 302/304 IPC); 106,527 cases of cruelty by husbands and relatives (section 498-A IPC; 45,351) assaults on women with the intent to outrage their modesty (section 354 IPC); and 9,173 cases of insult to the modesty of women (section 509 IPC). Except for the dowry deaths, every other crime against women witnessed a rise of around 6 percent in 2012 in comparison to 2008. The 2012 NCRB report also mentions that there were 2.84 cases occurring every hour in India (amounting to nearly one case every 20 minutes) in which 3.55 persons were



arrested in 2012. An increase of 1.1% in human trafficking incidence was observed (3,554 cases in 2012 as compared to 3,517 in 2011).

## **Human Rights and Children in India**

Education is regarded as one of the important human rights. Children must have proper facilities for education in a democracy like India. It is not provided compulsorily free and universal primary education by the government and only approximately 59 % of children between the age group 5-14 to attend school. In 2002 the Constitution was amended giving all children between ages 6 to 14 the right to free and compulsory education to be provided by the state.

Child abuse is regarded as one of the most violation of human rights. Though it is prohibited by law it is still continuing in Indian society. Female infanticide is a serious problem in Indian society. The ratio of female child to male has been declining day by day due to sex determination during pregnancy and female infanticide. According to 2001 Census there were 933 women for every 1000 men. The ratio of female child to male was much higher a hundred years back that is in 1901. It was 972 female per 1000 male in 1901. Abuse of children is a serious problem both in public and private level educational Institutions. An increase of 15.3% was reported in incidence of crime against children in 2012 over 2011. A total of 38,172 incidents of crime against children were reported in the country during the year 2012 as compared to 33,098 in the year 2011. Teachers often beat children. Child marriage is prohibited after *Child Marriage Restraint (Amendment) Act* it is the traditional practice in Indian society, especially in Northern India which is still going on. Though the act raised the age requirement for marriage for girl from 15 to 18 years, but the government does not enforce the act properly.

## **Caste or Curse?**

Caste system is a curse in Indian society which makes a division of society leading the gross violation of human rights. It has a long history tied to Hinduism in India. It divides society into different structural religious, cultural, and social roles to each



caste and sub-caste. To eliminate the discrimination among different castes and sub-castes many efforts have been taken, but the practice has remained the same. Though to remove untouchability is one of the fundamental rights which is mentioned in Article 17 of the Constitution, the practice of untouchability is still going on. Dalits are considered by many Hindus as separate section or below the caste system and that is why they were relegated to separate villages. It is the custom that dalits may be required to perform works as and when upper caste calls without remuneration. They are among the poorest citizens facing significant discrimination. And often using the same wells and from attending the same temples are prohibited to them.

#### Communal and Ethnic Violence in India

In July, 2012 violence took place in the Indian state of Assam which broke out with riots between Bodos and Muslims. During the period (July-August, 2012) more than 75 people were killed in clashes between Bodos and Muslim communities in Assam. A total of 400,000 people were temporarily taking shelter in 270 relief camps, after being displaced from almost 400 villages. Eleven people have been reported missing. Involvement of armed groups exacerbated tensions and violence. The authorities were criticized for their inadequate response. Ten years after the 2002 Gujarat Pogrom in which more than 2,000 Muslims were killed, the majority of victims and their families had not secured justice.

Members of Dalit communities continued to face discrimination and attacks. Special laws to prosecute suspected perpetrators were rarely used. In November, 2012 268 Dalit houses in Natham Colony, Tamil Nadu, were looted and damaged by caste Hindus enraged by the suicide of a man whose daughter had married a Dalit.

#### Minorities and Police in India

Indian Constitution provides the protection of individual rights. The courts have power to declare invalid any laws passed by the Parliament or State Assemblies if they contravene Indian Constitution. Articles 25 to 30 of the Constitution of India extend these guarantees to all kinds of minorities –religious, cultural and linguistic. In spite of the provisions given by the Constitution, rights of the minorities stand unprotected. There is a general feeling- police, protector of the people, plays deliberately partisan role. The Gujarat Pogrom has exposed the communal bias of

the police force. Not the entire police force, but a major part of the police contingent aroused by communal passions. They engaged themselves in communal violence. It has come as a shock to the Indian masses. We have found numerous instances in Srikrishna Commission Report where police callousness and bias left the minority community without any means of self-defense. Justice B.N.Srikrishna made the following observations in his Report on Bombay Riots 1992-93, 'The Commission is of the view that there is evidence of police bias against Muslims which has manifested itself in other ways like the harsh treatment given to them, failure to register even cognizable offences.' There are evidences from various reports that the role of police during communal riots has been far from desirable. It raises the important question of performance of police as an institution of state like India.

Violence between security forces, militia and Maoists

Clashes between armed Maoists and security forces continued in eastern and central India. Both sides routinely targeted civilians. They are killing people and spreading violence continuously. During the 'Operation Green Hunt' in Lalgarh of West Bengal the state had made statements that 'Operation Green Hunt' was against Maoists/Naxalites. But for the tribals 'Green Hunt' was nothing else but a united front of State and Mining Corporations to grab their land and rich natural resources by silencing the voices of those who fought for their homeland. Tribals think since Maoists and Naxals are well armed, they can defend themselves. It is they who are unable to protect themselves.

## Conclusion

Abraham Lincoln's dream of ideal democracy is shattered, because today democracy appears to be 'of the people', 'by the people' but not properly /truly 'for the people'. The government apparatus and the government itself faced a credibility crisis. Political parties as the legitimizing vehicle of parliamentary democracy suffered a lack of credibility due to criminalization of politics and motto of grabbing the power. After considering leading theories of the relation of justice and democracy, priority of justice and human rights should be given, in principle, over the authority of democratic decisions. Democracy is based on the requirement of

justice as equal freedom, itself one of the human rights, it follows ,that interventions on behalf of justice should be carefully delimited ,and specifically to cases where fundamental rights have been violated. The Indian Constitution abolished “untouchability” in Article 17.Despite this “untouchability” continues to be practised in India in various forms. We have seen there is a persistent increase in all forms of crime against women and children and other forms of violation of human rights in India. Communal violence and oppression should be handled in a human rights perspective. Many people from the minority community are incriminated only on the basis of suspicion and subsequently acquitted after a long period of time and thereby their lives are being massacred. Fake encounters by the Security Personnel violate Article 21 of the Constitution of India. Most of the victims are from the minority communities. Though several steps have been taken by the government to sharpen the edge of a tool like human rights, the main problem lies in the proper implementation of the same. Implication of acts regarding the protection of human rights is of greater importance but unfortunately it is significantly lacking in India. It is needed to concentrate less on legal norms and to connect more with social activism of Human Rights Organizations in India. The emphasis on individual in Western Societies is not apropos in India where man’s “social self” is far more crucial than in the West. Rights become real only when people begin to realize their full potential as human beings and affirm their rights both in public and private spheres. Human Rights of all should be protected in order to extend and strengthen Indian democracy. Otherwise secular fabric and democratic values will face a serious threat in future India.

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