

Human Rights & Indian Constitution

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- Give a comparative analysis of human rights ensured by the Indian constitution.
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The purpose of the constitution is to unlock democracy according to set principles, the cardinal of which is Justice, Liberty, Equality and Fraternity. Justice which is social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity and to promote among all Fraternity which shall ensure the dignity of individual-what greater statement of Human Rights have we heard being declared anywhere else!

To ensure that these concepts are enshrined and categorically enforced the constitution declared some rights as Fundamental Rights, for enforcement of which one can knock the highest court straight. Article 14 states that we are equal before law. If one

is equal than one is subject to equal protection before the law and promised of equal opportunities. To ensure that Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 16 mandates equality of opportunity in matters of public employment. To end the scourge of untouchability which had been the scourge of our civilisation Article 17 was introduced in the constitution to abolish Untouchability. To ensure equality among citizens Titles except those for public services were abolished vide Article 18.

Right to freedom of speech was ensured in article 18 and Protection of life and limb was guaranteed in Article 21.

Prohibition of traffic in human being and forced labour is there in Article 23. To safeguard children Article 24 prohibits their employment in factories. To ensure freedom of people to practice and propagate religion Article 25 is there. The interest of minorities have been protected under Article 29. To enforce these fundamental rights the constitution has another exclusive Article 32 which ensures remedy against its violation. Art 32 sets out at the very start-The right to move the Supreme Court for enforcement of the Fundamental Rights is guaranteed. The Supreme Court shall have the power to issue direction or orders or writs, including writs of habeas corpus, mandamus, prohibition, quo warrant and certiorari whichever maybe appropriate for the

enforcement of any right in this chapter (which deals essentially with Fundamental Rights). Article 14 mandates that all civil and judicial authorities shall act in aid of the Supreme Court. Thus much before the concept of Human Rights was enunciated we had put in a system which was even more encompassing on the issues of rights of people than human rights alone. Even the National Human Rights Commission was also set up by a constitutional machinery -the parliament !

The Directive principles of state policy in Chapter IV of the constitution between Article 26 to Article 51 also is in furthering peaceful, orderly and humane existence in India. The Constitution did not rest after declaring such loft ideals. To ensure that the

above goals are implemented the constitution mandated an elaborate system of governance at the union level and at the state level. This has led to ensure deliverance of democracy to the people of India. It created a check and balance so that power is not accumulated by some people or institution. It created a system of accountability right from Public Accounts committee to Comptroller General of Audit and Accounts(Art 148 -151).It ensured a free and vibrant judiciary(Art 124-146, 214-237)

Human rights are rights which accrue to human being by virtue of being born on this planet. This is much too less than the lofty ideals of our constitution. Human Rights can only be ensured when we have a philosophy of good governance matched by a set of rules for its working. Our constitution took this in account and included all aspects. Its not the constitution but it working which has failed us. Lofty ideals need efficient system to enforce it. That system has to be workable. For a judiciary which cannot correct itself cannot be independent too long or command the respect of people. Even the Supreme Court acknowledges this now as was recently widely reported. There is an urgent need to remove the corrupt and the dead woods amongst judiciary who are the sentinels guarding us against anarchy and chaos-no less important than the army guarding our borders. There is crisis of confidence with union ministers, Chief Justice of India, Big Business houses and top journalist coming under cloud for acting much

- Which article of the constitution ensures the interest of the minorities?
- What has led to ensure deliverance of democracy?

below than what one expects from them. No wonder one third of our country is under the sway of extremists, rising prices, extraordinary delay in disposal of cases due to huge back log running into crores, in the backdrop of blooming of billionaires and their extravagant lifestyle which surely corrodes the fabric of the nation and the constitution - violating the basic tenets of equality, fraternity and justice. A nation is held to ransom but we do have the answer.

For the society to be equal and accountable we need to have a jury system. The jury system is fundamental to Anglo Saxon law. No judge can hold us guilty unless the jury - a body of free citizen - finds us so. This was settled way back in 1215 in England - No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, nor condemn him, but by lawful judgment of his Peers, or by the law of the land. We will sell to no man, we will not deny or defer to any man either Justice or Right. This

privilege was taken and enlarged by the people of the England with great sacrifice and determination leading it to the ushering of democracy from a kingly state. The judges cannot order the jury to convict however strong maybe the evidence and was established in the Bushels case (1670AD). Not to have jury system gives the judges and the system exorbitant power making them susceptible to become a tyrant. Besides all this we need efficient and just handling of tortious disputes which ushers in accountability in the system. There has been attempts by the parliament by legislating consumer affair laws but its effect has been rather feeble. Unless civil courts in the country start granting adequate compensation things will continue drift. If a wrong doer has to pay by his nose for his wrong doing, others will think twice before such a hazardous venture. If a judicial magistrate would look at the people brought before him/her and ask if he has been tortured most human rights violation would cease. If a judge would look into the documents at the stage of cognisance and then at the stage of framing of charge in trial people would not have to suffer tyranny. But above all if only a body of free people, drawn independently from the neighbourhood each time would deliberate on the crimes of a person human rights would not suffer. It was removed in the sixties on the grounds that it can be corrupted. But then that would hardly be an argument to scrap the system for then we would have to remove the cabinet itself or the supreme court with aspersion on even the CJI by no less a person that a former judge of the apex court who went on to exclaim in anguish that he is ashamed to have been a part of judiciary !

But above all its we the people who are to blame. As a philosopher said we get the government we deserve - We continue to elect on reasons besides governance and hence governance gets a back seat. The day people of India will start electing people for good governance they shall get it.

Till now they are mostly electing their friends, relatives and castement which they are getting. The constitution is the repository of the collective wisdom of this nation and it also includes our concern on the fundamental rights and other rights of the people of India to be delivered by a constitutional machinery to deliver democracy.

We need to make it work. We need to elect right people on account of their integrity and competence so that they can usher in a system and body of people who would deliver good governance. Only good governance ensures that our rights are protected by a series of work and system which effects our daily life. That would be indeed our next freedom struggle for every freedom and right has to be fought - Freedom and democracy is never free. Eternal vigilance is the price of liberty!

National Human Rights Commission of India

The National Human Rights Commission (NHRC) of India is an autonomous statutory body established on

October 12, 1993, under the provisions of The Protection of Human Rights Act, 1993 (TPHRA). Retired Chief Justice of India (CJI) KG

Balakrishnan is the present chairman of the national human rights commission (NHRC).

TPHRA mandates the NHRC to perform the following functions:

- proactively or reactively inquire into violations of human rights or negligence in the prevention of such violation by a public servant
- visit any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates and make recommendations
- review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation
- review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures
- study treaties and other international instruments on human rights and make recommendations for their effective implementation
- undertake and promote research in the field of human rights
- spread literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means
- encourage the efforts of NGOs and institutions working in the field of human rights
- such other function as it may consider it necessary for the protection of human rights.
- take suo motu action, if required in a case if the victim is not in a position to access a court. □□

- What role do the civil courts in India play?
- Give a brief sketch of NHRC & its functions.