

“EMERGENCE OF HUMAN RIGHTS IN THE CONSTITUTION OF INDIA AND CHALLENGES”

DEBASREE DEBNATH

INTRODUCTION

Human rights or moral rights are the basic rights of every individual which exist independent of state and it do not require state for their existence, but mere existence is not sufficient for using these rights as it needs legal protection. Therefore, under the umbrella of various legislations and the Constitution of India, these rights are recognised and protected by the state. However, state can make a choice on up to what extent human rights are to be protected and within what means it needs to be protected –these choices remain with the state. The human rights have existed throughout the ages, but the legal recognition was given for the first time in the form of ‘Magna Carta’ in the year 1215. The concept of *dharmā*, rights, duties, obligations –all these describe the basic principles of human rights. The Manusmriti and Arthashastra elaborate the civil and legal rights which also include the economical right. Earlier, the individuals surrendered all their rights to the state for securing it, Thomas Hobbes called it as Leviathan; it includes the rule by a sovereign authority and mentioned about social contract. The human rights are also connected to natural rights since it emerged to protect the natural rights of the individuals. These rights are recognised by various international conventions and charters. In the present era, human rights can be traced at the bottom of the constitutional order as it mentioned about rights of individual as well as groups. The fundamental rights are nothing but the natural rights of the individuals which are protected against the state. Fundamental rights in the Constitution are distributed in the two senses; firstly ‘citizenship’ in Article 15, 16, 19, 29, 30 and secondly, ‘all people’ in Article 14, 21. So, the ‘all people’s’ rights can be made fundamental rights, as the human rights are basic rights for all and not limited to the citizens alone. The objective of the paper is to discuss the evolution of human rights in ancient Indian literature and the challenges, and elaborate the relation of human rights with natural law theory. The researcher also discussed about human rights in the Indian Constitution, response of the judiciary and various international conventions which protect the human rights. Human rights are linked with every individual and every nation –whether it is developed or underdeveloped to secure its present as well as future generation.

These rights recognise the potential to determine the future of a human society as the people of a particular society will cultivate its own method and standard of living. Denying human rights to an individual will destroy the humanity as a whole; as nation cannot grow without human potential and insufficient resources. Social progress, economic empowerment, individual growth, social stability –everything depends on the individual rights which were granted by the state to protect their basic human rights. People will only develop if they are given their rights which are necessary; fundamental freedoms which includes the basic human rights, it helps us to grow with our intelligence, intrinsic qualities, talent and conscience to meet our material and spiritual needs. Human rights are essential for life and forms the inalienable rights for everyone; these rights do not depend on an individual's status, caste or culture, religion and nationality; therefore, these rights cannot be confined to the jurisdiction of any state.¹ Human rights are applicable universally; as they are accepted throughout the world and are protected by the Constitution of India as well as various national and international legal instruments. These rights are justiciable – these rights can be enforced before the Court, and they can be exercised against the society and state. Human rights include the notion of duties and concern about the relations between the individual and state. The Universal Declaration of Human Rights (UDHR) 1948 has generally recognised that human rights have ceased to be a matter of domestic jurisdiction, and they have become a matter of international concern.² In other words, whatever is necessary to lead a dignified life can be termed as human rights. In India various references can be traced from the times of *Vedas*; in *Rig Veda*, there is a reference to the three civil liberties of *Tana* (body), *Sridibi* (dwelling house), *Jibasi* (life). In ancient period human rights were protected by *dharmā* – it says about the rights and duties of the people in the society. Long before Hobbes, the greatest epic *Mahabharata* described civil liberty of the individual in a political State. The declarations, such as 'Magna Carta' issued by King John in the year 1215 and the Universal Declaration of Human Rights 1948 worked like a stepping stones, beacon in the dark.³ The Constituent Assembly adopted the Constitution of India on November 26, 1949 and it came into force on January 26, 1950. Drafters of the Constitution realised that human rights must be included in the Constitution of India. The most important rights which are very much important for an individual are placed in Part-III of the Constitution of India, and the remaining rights are incorporated in Part-IV of the Constitution.

1 S. K. Kapoor, Human Rights: Under International Law And Indian Law, (6th ed., Central Law Agency 2014).

2 Ibid.

3 D. R. Malhotra, NGOs And Protection Of Human Rights 2 (1st ed. Deep & deep publications 2011).

EVOLUTION OF HUMAN RIGHTS

Since the Indus valley Civilization, the traditional Indian culture and various religions came into existence; these people inherited all these human rights from the people of time immemorial. It is traceable in ancient Greek Period and with the emergence of civilization the people began to respect the rights of other people. Men were given some right which were endowed by birth, such as right to life, liberty. In the era of ancient time the natural laws prevailed in the society, and during the middle ages the King dominated the rights of the people. In the ancient India, *dharma* played an important role and controlled all the rights of an individual including the civil, political, religious and other rights; it also mentioned about the individual's duties in society including the King and his subjects. *Dharma* was the supreme law in ancient India, and it governed every aspect of life. John Locke in his work mentioned about the limited form of Government and basic human rights. With the development of human civilization it became necessary to protect the rights of the people. Therefore the Universal Declaration of Human Rights (UDHR) 1948 was established; it is known as the cornerstone for the enlargement and development of human rights in India.

HUMAN RIGHTS IN INDIAN ANCIENT LITERATURE

In India the concept of *Dharma* in the Vedic era had planted the roots of human rights among the people; as these rights had found its place in the *Shrutis*, the *Vedas* – *Rig Veda*, *Yajur Veda*, *Sama Veda* and *Atharva Veda* and the *Smritis* which includes *Dharmasutras*. The notion of such rights have been a part of ancient Indian perspective from the time immemorial. The philosophy of human rights is embedded in the *Vedas*, *Upanishads*, *Puranas*, *Mahabharata*, *Srimad Bhagvad Geeta*, *Smitis*, *Dharamsutras* and *Dharamsastras*. The important sources of Hindu law are the *Shrutis* and *Smritis*. In the later period of Indian civilization the *Shrutis* and *Smritis* became the sources of *Dharmasastras* and *Dharmasutras*. Human rights always occupied a prime place in the historical tradition and culture. The ancient Indian philosophy included the concepts of freedom of speech, freedom of association and the other rights of an individual. The word *Adhikar* was used in ancient India. From the morphological point of view, the morpheme, “*kerre*” is the stem or the root of the Sanskrit word *adhikar*, which means ‘to do’ or ‘to perform a duty’.⁴ *Dharma* was the supreme law in ancient India, and it governed every aspect of the life. *Dharma* is derived from *Dhri* and emphasises to sustain, to preserve, to observe, to promote the values. The concept of *Dharma* and *Danda* – punishment have a different perspective of law. *Dharma* give the idea of rule of law, thus it curtail the absolute power of the ruler through the concept of *Rajadharm*.

4V. S. Aapte, Sanskrit-Hindi Dictionary, 30 (2nd ed. Online Books Store.in 2005).

Dharmashastras impressed upon the Kings to look upon the people as God and serve them with love and care. In the Vedic period, the word justice had found its roots in the Sanskrit language which is traceable through Roman *jus* to the Sanskrit *Vu* meaning 'to join' or alternatively to the Sanskrit *yo*, a word of religious connotation.⁵ In ancient India, *Vedas* described the universal rules of *dharma* (righteousness), *artha* (wealth), *kama* (desires), *moksha* (salvation). *Rig Veda* is the oldest among all the *Vedas*, and all the other *Vedas* are based upon it. *Rig Veda* mentioned about the duty of the ruler and what kinds of rights and duties can be used; it contains several rules for life, hymns, prayers and origin of the world.⁶ *Brahmins* in the ancient era interpreted the *Vedas* in accordance with the situation of the environment. The socio-economic and political conditions were taken into consideration in interpreting the *Vedas*. Some scholars like Narada and Kautilya interpreted the concept of *Vedas*, they interpreted the law and order, and administration of justice. In the ancient time land was the only property of the people, this right was not guaranteed by the King or any creation of the legislation, this right is granted by the Nation to the people. Human rights were incorporated with the human being, nature has granted these rights to the people. The King was subjected to law, and he always ruled his administration through equal means to everyone. The King implemented justice by abiding the rules of *shastras*, religious texts, other customary and traditional practices and written codes. The King was bounded by the *Dharmashastra* to decide cases according to rules of *Sbastras*. The *Shruti*, the *Smriti*, the *Puranas*, customs and usages were the principle sources of law, and they were related to the concept of *dharma* – it regulated all the activities of an individual to restrict the indiscriminate use of rights and liberty; it secures all happiness and harmony in life. In the *Arthashastra*, Kautilya mentioned that the happiness of a king lies in his subjects and in the welfare of his subjects; anything which is pleasant for the king should be considered as good.⁷ *Arthashastra* provides all the civil, political and economic rights of the people. Before *Arthashastra* there was nothing to protect the economic right of the people. The epic *Mahabharata* and *Ramayana* also described the concept of human rights. The greatest epic of human kind *Mahabharata* mentioned *dharma* as the root of State; as it described the enforcement of law which is essential for the existence of the state. The king controlled the evils in the society through moral law which prevailed in the society. *Mahabharata* also mentioned that “without ethical and moral principles, there is no true happiness and a society cannot hold together; the principles such as truth, self-control, asceticism, generosity, non-violence, constancy in virtue should serve as the means of one’s

5 V.T. Thamilmaran, Human Rights In Third World Perspective 46 (1st ed. Har-Anand Publications 1992).

6 Karel Werner, A Popular Dictionary Of Hinduism 45 (2nd ed. Curzon 1994).

7 D.P. Khanna, Reforming Human Rights 77 (1st ed. Manas Publications 2001).

success”.⁸ In *Ramayana*, Lord Rama forbade Lakshman to use a weapon of war which could destroy entire humanity. *Bhagvat Geeta* also preached to meet the responsibilities of life. In 100-400 A.D. written Hindu laws come into existence due to the two books namely, *Yajnavalkya Smriti* and the *Narada Smriti*. Manu – the Hindu law maker mentioned all the rights – civil, political and economic rights in the *Manusmriti* for the administration of justice. Manusmriti recognises eighteen crimes and their punishments. The execution procedures are also laid down in the *Manusmriti*.

NATURAL LAW THEORY

The doctrine of natural law exists due to the existence of a natural moral code; as it contains the basic aspects of fundamental human goods. In the Indian context with respect to the concept of human right, the judiciary has accepted it as a natural right. The Court in *Motilal v. State of Uttar Pradesh*⁹ held that, fundamental rights are great and basic rights; similarly, in *L. C. Golaknath v. State of Punjab*¹⁰ the Court held that human rights are modern name of natural rights. Again the Apex Court in *West Bengal State v. Subodh Gopal Das*¹¹ decided that, human rights are recognised and secured as in terms of natural rights. In *A.D.M. Jabalpur v. Shukla*¹² the Court held that these rights are aimed to be fundamental because these are provided as security against the rights violated by executive, legislative and judicial authorities. In addition to these definition and judicial trend, the concept of human right has been explained in the different Acts, Statutes and in some International Covenants. Natural rights are pre-existed in the society from the time when society was created, it protects the individual’s rights. John Locke, a greatest philosopher and jurist of the natural law philosophy in the 17th century mentioned that, every individual possesses natural rights; he mentioned that, natural rights originates from the natural law and it has its root from the divine origin. Every individual owes a duty towards the divine origin as it entitled us with the basic rights such as right to life, liberty and property.

CONSTITUENT ASSEMBLY DEBATE

In the beginning, the people resided in a peaceful society, there was no collusion and arbitrary action between the people. They resided happily and peacefully in the society. But with time there emerged the need of protecting these rights of the individual which emerged from the notion of self-preservation. K.T. Paul, a prominent drafters of the Constitution stressed the

8 L. B. Harsh, *Human Rights Law In India : Protection And Implementation Of The Human Rights Act, 1993* 22 (1st ed. Regal Publications 2011).

9 AIR 1951 All 257.

10 AIR 1951 SC 1643.

11 AIR 1954 SC 92 pp. 95-96.

12 AIR 1976 SC 1207, p. 1293.

necessity of fundamental rights in the Indian Constitution; he highlighted the need for inclusion of such rights under the protective shield of Constitution of India. He also emphasised the need of machinery to protect such rights. K.T. Paul mentioned that, it is essential to include some declaration of fundamental rights in the statute; as the constitution was enacted subsequent to the war.¹³ Dr. B.R. Ambedkar, one of the well-known drafters of the Constitution also mentioned about the necessity of inclusion of these basic rights in the forms of fundamental rights in the Constitution with a machinery to protect them and to ensure that they were not violated. Finally, after the Round Table Conference was over, a report was submitted to the Parliament by the Secretary of State for India. The Government recognized that Indian Constitution needs a chapter on fundamental rights to protect and guard the rights of the individual. The fundamental rights were drafted by various drafters of the Constitution such as, K. T. Shah, K. M. Munshi, B.R. Ambedkar, and the Congress Expert Committee. The fundamental rights consist of both positive and negative rights, they were taken from the various foreign Constitutions and other Indian documents of rights. The Advisory Committee was formed and Sardar Patel became the Chairman of the committee. Afterwards, the other members of the Fundamental Rights Sub-Committee consented to made fundamental rights as justifiable. The Committee adopted the rights to freedom, provisions for the abolition of untouchability and other important rights very quickly. Ambedkar, Munshi and Ayyar vigorously consented for the inclusion of the right to constitutional remedies, which is agreed by other members of the Sub-Committee. The drafters of the Constitution also focused on the right of the minorities. They thought that if the minority groups of people were not given some reservation, they will be deprived of their rights. So, to give them equal status and to bring them in the welfare society, the framers of the Constitution inserted the reservation policy in the Constitution. The other drafters of the Constitution provided certain rights which should include in the Constitution, such as, right against exploitation. The drafters realised that, forced labour is an evil practice which is known as “beggar.” It is form of forced work by the labourers without paying any remuneration. Articles 23 and 24 of the Constitution deal with the Right against Exploitation. In *State of Rajasthan v. Om Prakash*¹⁴ the Court held that, the children are futures of the society and they should not be exploited in any form.

HUMAN RIGHTS AND INDIAN CONSTITUTION

The Constitution of India is a right based Constitution; it means it provides the rights to its citizens and non-citizens. Human Rights can be traced in the preamble of the Constitution itself

¹³ Indian Round Table Conference, Proceeding of the Sub-Committee No. III Minorities, London, 1930.
¹⁴ (2002) 5 SCC 745.

and Part-III and Part-IV includes both the fundamental rights and directive principles, which together enshrined the basic principles of the Universal Declaration of Human Rights and the Covenants on Civil and Political Rights, Economic, Social and Cultural Rights. Human rights are the basic requirement for the development of an individual which are recognized by the state itself. These rights provide protection to an individual which is required to live a dignified life and his or her contribution to the society. Therefore, these rights are termed as inalienable and inviolable human rights, they allow every individual to fully use their human qualities and their talent to satisfy their social, political and spiritual needs.

UNDERPINNING OF HUMAN RIGHTS

Human rights are the birth rights which are provided to every individual irrespective of their caste, creed, colour, sex, place of birth. Slowly and gradually, some of these basic and inalienable rights are included in the Constitution of India, which is now known as fundamental rights. Many provisions of Universal Declaration of Human Rights (UDHR) 1948 are included in the Constitution of India which appears that, the drafters of the Constitution were conscious about the contents of the Declaration. The Constitution has devised checks and balances of the human rights but the greatest check are the people themselves, because, human rights are for the people. The Supreme Court in *Kesavananda Bharati v. State of Kerala*¹⁵ held that, the drafters of the Constitution realised the incorporation of various human rights while framing the Constitution of India and hence, they incorporated such rights which were already existed in the Universal Declaration of Human Rights as these rights were not legally binding. The Civil and Political rights included in Part-III of the Constitution of India are given greater importance in comparison to the Social and Economic rights, which are included in Part IV of the Constitution. However, Article 37 clearly mentioned that, their judicial non-enforceability does not weaken the duty of the State to apply them in making laws, since they are “nevertheless fundamental in the governance of the country.”¹⁶In *A.D.M. Jabalpur v. Shukla*¹⁷ Justice Beg observed that, the main reason behind forming certain basic rights as fundamental right is to protect and guarantee them from any illegal invasion by the administrative body – executive, judicial and legislature.

15 AIR 1973 SC 1461.

16 L. B. Harsh, Human Rights Law In India : Protection And Implementation Of The Human Rights Act, 1993 27 (1st ed. Regal Publications 2011).

17AIR 1976 SC 1207.

HUMAN RIGHTS AND FUNDAMENTAL RIGHTS

Constitution of India incorporated many human rights and protect the human rights of the individual. It not only incorporated the inalienable basic rights in the Constitution, but, also took initiatives to translate these rights into reality. The various human rights which are recognised as fundamental rights are discussed below¹⁸:

| Name of the rights | Universal Declaration | Indian Constitution |
|--|-----------------------|---------------------|
| Equality before law | Article 7 | Article 14 |
| Prohibition of discrimination | Article 7 | Article 15 (1) |
| Equality of opportunity | Article 21(2) | Article 16 (1) |
| Freedom of speech and expression | Article 19 | Article 19 (1) (a) |
| Freedom of peaceful assembly | Article 20 (1) | Article 19 (1) (b) |
| Right to form associations or unions | Article 23 (4) | Article 19 (1) (c) |
| Freedom of movement within the border | Article 13 (1) | Article 19 (1) (d) |
| Protection in respect of conviction for offences | Article 11 (2) | Article 20 (1) |
| Protection of life and personal liberty | Article 9 | Article 21 |
| Protection of slavery and forced labour | Article 4 | Article 23 |
| Protection of conscience and religion | Article 18 | Article 25 (1) |
| Remedy for enforcement of rights | Article 8 | Article 32 |

HUMAN RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

Many human rights were incorporated in the Part-IV of the Indian Constitution as Directive Principles of State Policy. The rights which were incorporated in the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976 as well as some other Conventions found its place in Part IV of the Constitution.

HUMAN RIGHTS TREATIES

After the World War – I was over, there emerged the concern for protection of human rights by various international machinery which in turn found its expression in certain provisions of the

¹⁸ H.O. Agarwal, International Law And Human Rights 790 (19th ed. Central Law Publication 2013).

Covenant of the League of Nations.¹⁹ After the establishment of League of Nations, human rights were developed and modified in the international sphere.²⁰ In the League of Nations human rights were not explicitly mentioned, but, it seeks to protect and guard such rights of the individual. The most celebrated declaration which was enacted after the war which included human rights is the Universal Declaration of Human Rights. It is the cornerstone for all the basic rights as its purpose is to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedom.²¹ The Universal Declaration of Human Rights (UDHR) was adopted on December 10, 1948 and it defines more specifically the human rights as well as the fundamental freedoms mentioned in the United Nations Charter.

INTERNATIONAL CONVENTIONS RELATING TO HUMAN RIGHTS

Apart from UDHR, some other international instruments also guard to protect the human rights – International Covenant on Civil and Political Rights (ICCPR) 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1996 and the two Optional Protocol to the International Covenant on Civil and Political Rights 1966. Both the Covenants were adopted by the General Assembly on December 16, 1966. On March 23, 1976 the Covenant on Civil and Political Rights 1966 came into existence and on January 03, 1976 the Covenant on Economic, Social and Cultural Rights 1966 came into existence. The fourth generation of human rights are found to be endorsed with the respective bodies of United Nations in the new world order, these rights are developed in the 21st century. This generation of rights includes, right to common heritage of mankind among others.

CONVENTION ON ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, 1979

This Convention was adopted by the General Assembly on December 18, 1979 to eliminate all the discrimination against women. This Convention provides equal right to every individual irrespective of their gender in the field of employment; it also took appropriate measures relating to marriage and family relations and eradicate all forms of discrimination in all these matters.

19 G. Singh, Role of National Institutions and Non-Governmental Organisations (NGOs) in Promotion and the Protection of Human Rights—A Case study of India, B. P. Singh, (ed.), Human Rights in India: Problems And Perspectives 75 (1st ed. Central Law Publication 2008).

20 L. B. Harsh, Human Rights Law In India: Protection And Implementation Of The Human Rights Act, 1993 85 (1st ed. Regal Publications 2011).

21 The Charter of the United Nations came into force on 24 October 1945.

INTERNATIONAL CONVENTION FOR SUPPRESSION OF TRAFFIC IN PERSONS AND EXPLOITATION OF THE PROSTITUTION OF OTHERS, 1949

This Convention was adopted on December 02, 1949. The states which are parties to the Convention had undertaken to repeal or abolish the existing laws which enabled or allowed persons to engage in the activities which are prohibited under the Conventions. This Convention prohibits the act of prostitution even if it is with the consent of the person concern.

CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMANE OR DEGRADING TREATMENT OR PUNISHMENT (CAT), 1984

Torture is a heinous crime in our society. It is an act punishable under the Torture Convention. The General Assembly on December 10, 1984 adopted this Convention. The UDHR and the ICCPR also protect people against such rights under Article 5 and 7 respectively.

CONVENTION ON THE RIGHTS OF THE CHILD 1989

It recognized welfare of every children who were refugees, disabled or members of minorities. This Declaration consisted of ten principles and all these principles protects the rights of the child irrespective of their race, colour, sex, language and religion.

PROTECTION OF HUMAN RIGHT IN INDIA

Human rights are inherent right of every individual which are applicable universally. In the language of United Center for Human Rights, “human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings.” Society is changing with time and the Judiciary needs to change for the welfare of the people. Our Judiciary has grabbed the traditional method of Judicial Activism; so, it needs to adopt a protective approach with regard to every rights of the individual and other need to look into the socio-economic conditions of the people.

JUDICIAL RESPONSE

The judiciary always work as a guardian and protector of individual rights and plays a significant role in providing proper guidelines and legal mechanisms for implementation and enforcement of human rights; such rights are included in the Bill of Rights, and they are given much more importance under the Indian Constitution and the Indian Courts are also given vast powers to act as a shield to protect the human rights of all individuals. The Court in *Keshavananda Bharati v. State of Kerala*²² held that, if necessary the constitutional amendment of the provisions can be

²² AIR 1973 SC 1461.

struck down by the judiciary as violative of the “basic features”. Thus, the judiciary has given wide powers to interpret the provisions of black letters of law and made judicial review as the basic feature of the Constitution. In *A. K. Gopalan v. State of Madras*²³ the Court held that, Article 21 of the Constitution has a wide and expansive meaning. Article 21 reads: “No person shall be deprived of his life and personal liberty except according to procedure established by law.” Under this judgement, the Court also ruled that, once there was a law, which prescribed a procedure, there was compliance with Article 21. Again the Court in *Parmananda Katara v. Union of India*²⁴ decided that, all the doctors –including government or public professional are obligated to extend medical facilities to the injured person immediately, so to preserve the life of the people. The doctors should do it as a professional obligation towards the patients and without any delay. In *Anuj Garg v. Union of India*²⁵ Section 30 of the Punjab Excise Act was challenged before the Court; on the grounds of violation of Articles 14, 16, and 21 of the Constitution as it prohibits the employment of women in Hostels and Bar service. The Apex Court while dealing this case decided that, this provision is discriminatory and the state shall ensure the safety of the woman as a part of their duty and professional requirements which inspire confidence in women. Another important aspect of human rights can be put here with regard to the Uniform Civil Code (UCC) in our country. Article 44 of the Constitution provides that, “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.” The Article envisages that in making personal laws uniformity must be adopted so that the same laws become applicable to all citizens. Another important decision of the Apex Court was *Sarla Mudgal v. Union of India*,²⁶ the Court in this case directed the Central Government to take a fresh look at Article 44 of the Constitution as it provides equal rights to the citizens and secure national unity and integrity among the people. The inadequacy of rights between different religions can be traced in *Pragati Varghese v. Cyril George Varghese*.²⁷ The Court in this case decided to delete Section 10 of the Divorce Act; as this provision is violative of the rights of Christian women. The Court also mentioned that, this provision violates the concept of dignity as provided under Article 21 of the Constitution. Similarly, the Apex Court in *Mohd. Ahmed Khan v. Shab Bano Begum*²⁸ decided that, the Muslim husband has to maintain his wife after the *Iddat* period also who is not able to maintain herself and it is not limited to *Iddat* period. Section 125 of the Code of Criminal Procedure 1973 is secular in nature and any religious person can apply

²³ AIR 1950 SC27.

²⁴ AIR 1989 SC 2039.

²⁵ 2008 3 SCC.

²⁶ 1995 3 SCC 635.

²⁷ AIR 1997 Bom. 349.

²⁸ AIR 1985 SC 945.

under this section. The Court also emphasized the need for uniform civil code in this particular case to remove the inequality among the women while receiving maintenance after dissolution of their marriage. In *Danial Latif v. Union of India*²⁹ the Supreme Court again enlarge the scope of section 125 CrPC 1973 and mentioned that, a Muslim woman should be maintained by her husband even after the expiry of *Iddat* period. In this case, the Apex court also envisaged the need to frame the uniform civil code for every religious people. Again in *John Vallamatton v. Union of India*³⁰ the Supreme Court mentioned that, under Article 44 of the Constitution of India, there is no linkage between religion and personal law in a civilized society.

CONCLUSION

An attempt has been made in this work by the researcher to shed a different illumination with respect to the emergence of the basic human rights in the Indian Constitution and challenges. From this research work what has emerged is that, human rights are engraved in Indian civilization from the very beginning. The people of India are given the basic human rights in the form fundamental rights and directive principles of state policy which protect their rights as in the absence of these rights they will not able to live in the society peacefully and happily. It assumes that, since independence, the Indian society has progressed in diverse areas of human life. However, the current human rights challenges are miles to go, before one can lay the claim of substantial fulfilment of the constitutional promises. The prime challenges remain eradication of poverty, illiteracy, population control, and ensuring the right to work. Human rights or the birth rights are considered as the greatest gift of this new generation and a milestone in the development of the rights of man. Various declaration, covenants and legislations have been initiated and entered into the national and international levels to ensure safety, protection and promotion of human rights. But, instead of all these measures, these rights are violated in numerous ways. The concern for human rights has become a very vital significance towards mankind as these rights are violated every day in India, although we have written Constitution and various Acts for the protection of these rights. Violations of human rights is a heinous crime against the individual as well as society and hence it is a serious problem which needs to be considered with the entire human race. In the present era, we are in need of a strong civilised society which can be based on the fundamental principles, so that all can accept the basic human rights or natural rights both in theory as well as in practice.

²⁹ AIR 2001 SC 3262.

³⁰ AIR 2003 SC 2902.

SUGGESTIONS

It is very clear from the discussions that, basic right or human rights need to be protected as it become very much essential today for every individual. It should be protected whether the violations were committed by the Government and its machinery or by others. By creating awareness among the people, all these rights can be protected in a well-protected manner. The Human Rights Commission has organised various awareness programmes to create attention among the peoples. The Non-Governmental Organizations (NGOs) also play a significant role in generating awareness among the masses regarding various issues affecting the society and for the upliftment of human race. In India there are number of people who do not know regarding their rights, so, by creating awareness programmes people will be aware of their rights. The human rights can also be protected by improving confidence in the weak and disadvantaged people to stand and ask for enforcement, protection and preservation of their rights. Imparting new skills and training among the people by the policy-makers also help to protect the human rights. All the states should be asked to establish Human Rights Courts in every District, as envisaged in the Protection of Human Rights Act 1993, which will reduce the workload of the Apex court and the High Courts and help people to use their basic rights. The Protection of Human Rights Act 1993, should be amended which can ensure an enforceable and implementable right of compensation for unlawful detention or arrest. Lastly, the researcher found that, human rights are of great importance for the development of human being in our society and to live with dignity. So, all these rights need to be protected. By taking all the measures as well as by taking other measures which are convenient, these rights can be protected.
