

connection with the marriage of the said parties, but does not include dower or mahr. This definition includes any property or valuable security given or agreed to be given at or before or after anytime of marriage in connection with marriage.

(d) Maintenance

In India all most all the religions have recognized the responsibility of husband to provide maintenance to his wife. The same is also recognized under personal laws. To provide speedy relief to the needy person the Code of Criminal Procedure, 1973 contains provisions in section 125 to 127. Section 125 of the Code provides that if any person having sufficient means neglects or refuses to maintain, his wife, unable to maintain herself, may claim maintenance from her husband. Under the Code 'wife' includes a woman who has been divorced by or has obtained a divorce, from her husband and has not re-remarried. This provision has no application to the Muslim divorced women, they are governed by Muslim women (Protection of Rights on Divorce) Act, 1986.

V. Conclusion

The above study reveals that there are enough legal provisions are available under criminal law to deal with offences relating to marriage. In spite of existence of number of such legislative provisions to punish the offenders involved in offences against marriage, there is no end has seen of such violence.

This evidence would lead to draw the inference that it could be due to lack of social awareness and ineffective implementation of existing legal provisions.

In criminal cases, the delay in conduct of trial kills all chances of prosecution to prove the case, with witnesses turning hostile and evidence drying up, therefore, there is need to conduct speedy trial in the interest of justice. It is also noticed that in some cases after the death of their daughter parents compromise with the offender by receiving some amount or properties given to him. This kind of practice should also be given up, parents and relatives should come forward to give testimony in Courts to prove the offences and atrocities against women and see that the offender must be punished according to law. In criminal cases police is the main law enforcement agency on whom there are number of responsibilities, therefore, there is a need to create separate agency for the enforcement of law relating to marriage.

At the end it may be further concluded that law by itself is no deterrent against crime, it is the attitude of the society in general and the individual in particular that determines the effectiveness of legal system. For every social problem passing of legislation is not the answer, what is required is creation of social awareness and education to eradicate social evils. Hence, it is suggested that there is a need to bring social awareness in eradication of such evils from society apart from stringent enforcement of law.

INDIAN CONSTITUTIONAL VISION ON HUMAN RIGHTS

By

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The concept of human rights in current politics. The rapid growth of Law relating to international protection of human rights. The

frequent appeals to human rights for social change, curbing Governmental law lessens social oppression. In this context we would

examine the extent to which the Indian Constitution could accommodate the principles enshrined in the universal declaration of human rights (1948). In this Article an attempt is made to explain the following basic concepts.

1. The relationship between Fundamental Rights, Human Rights and Directive Principles.
2. Studying the doctrine of state action, right as limitation on power judicial review, doctrine of emanation and writ jurisdiction.
3. The utility of the judicial activism of the Indian Supreme Court through public interest litigation (PIL) in the Area of Human Rights (Social Welfare Rights).

A right cannot be said to be Fundamental if it is not enforceable against the state by the Courts. A special feature of Fundamental rights under the Indian Constitution is not only the rights, themselves, but the constitutional remedy to move the Supreme Court for their enforcement is also guaranteed as a Fundamental Right (Art. 32).

In India, the protection of the Human Rights Act, 1993 defined Human Rights as "The rights relating to Liberty, Equality and Dignity of the individual guaranteed by the Indian Constitution as embodied in the Fundamental Rights and International Covenants". The Fundamental Rights and Directive Principles of State Policy together provide the basic Human Rights for the people of India. Fundamental Rights stress on the existing Rights, Directive principles provide the dynamic movement towards the goal of providing Human Rights for all.

The framers of the Indian Constitution were inspired by the ideals of international peace and respect for Human Rights. On December 10, 1948 the Universal Declaration

of Human Rights was adopted by the United Nations General Assembly. This was the time, when debates on rights in the Indian Constituent Assembly were held. Hence, it could be assumed that the makers of the Indian Constitution while framing Part III on the Fundamental Rights were influenced by the provisions of the Universal declaration.

A Comparison with the Universal Declaration of Human Rights :

When we compare the provisions of the Constitution of India to that of Universal Declaration of Human Rights we find many Articles have the same spirit to the point of being identical. By presenting the Indian Fundamental Rights along with the Articles of the declaration a comparative assessment can be made.

Equality before law :

Article 14 of the Indian Constitution States, "The State not deny to any person equality before the law or the equal protection of the laws within the territory of India".

Article 7 of the Universal Declaration of Human Rights (1948) states, "All are equal before law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination".

On the subject discrimination on grounds only of religion, race, caste, sex, place of birth or any of them :

Article 15 (1) of the Indian Constitution guarantees that, "The State shall not discriminate against any citizen of grounds only of religion, race, caste, sex, place or any of them".

Article 2 para (1) of the Human Rights declaration states: "everyone is entitled to all

the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.”

Equality of opportunity in matters of public employment:

Article 16(1) of the Indian Constitution mentions : “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state”.

Article 21(2) of the Human Rights declaration states, “Every one has a right to equal access to public service in his country”.

Freedom of Speech, Assembly, Association etc.:

Article 19(1) of Fundamental Rights guarantee that All Citizens shall have the : Freedom of speech, Assembly, Association, etc.

Human Rights declaration in its Article 19 expresses, “Everyone has the right to freedom of opinion and expression”.

Protection in respect of conviction for offenses :

Fundamental Rights guaranteed to citizens *vide* Article 20(1) states, “No person shall be convicted of any offence except for violation of law in force at the time of the commission of the act charged as an offense, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence”.

Universal Declaration of Human Rights in its Article 11(2) used more or less the same terminology, “No one shall be held guilty of any penal offense on account of any act or omission which may not constitute a penal offence, under national or international law,

at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time of penal offense was committed”.

Protection of life and personal Liberty :

According to Article 21 of the Indian Constitution, “No person shall be deprived of his life or personal liberty except according to procedure established by law”. The same aspect has been covered by the human rights declaration in its Articles 3 and 9. Article 9 states, “No one shall be subjected to arbitrary arrest, detention or exile”.

Prohibition of traffic in human beings and forced labour :

Article 23(1) of the Indian Constitution states that, “Traffic in human beings and Begar and other similar form of forced labour are prohibited and any contravention of this provision shall be an offense punishable in accordance with law”.

Declaration of Human Rights in Article 4 provides, “No one shall be held in slavery or servitude; slavery and the slave trade be prohibited in all forms”.

Protection of interest of minorities :

Article 29(1) of the Fundamental Rights states, “Any section of the citizens residing in the territory or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same”.

In Article 22 of the Human Rights declaration we find that, “Every one as a member of society, has the right to social security and is entitled to realization, through national effort international co-operation and in accordance with the organization and resources of each State, of the economic, Social and Cultural Rights indispensable for his dignity and the free development of personality”.

Rights of Minorities to establish and administer Educational institutions :

Article 30(1) of the Indian Constitution provides, "All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice".

Article 26(3) of the declaration states, "Parents have a prior right to choose the kind of education that shall be given to their children".

Right to Constitutional Remedies :

Article 32(1) states that "the right to move the Supreme Court by appropriate proceedings for the enforcement of rights conferred by this part [fundamental rights] is guaranteed".

The Declaration of Human Rights in its Article 8 states, "Every one has the right to have an effective remedy by the competent national Tribunals for facts violating the fundamental rights granted to him by the Constitution or by law".

Directive Principles :

Part IV of the Indian Constitution (Articles 36 to 51) dealing with the Directive Principles of State of the Constitutional Government.

The Indian Constituent Assembly took enough care to keep the Government's authority intact, which at the same time it took equal pains to make the citizens feel comfortable with the state. Fundamental Rights and Directive Principles provide assured safeguards in this direction. The constituent assembly realise the limitations of the Government resources in fulfilling the needs of the people. However, through the Directive Principles an attempt was made to keep the Government reminded of its ultimate objective of providing better life to the people.

As earlier stated the Indian Constitution contains a specific provision in the form of directive to the State to oblige and respect international treatments and obligations. Incorporation of Directive Principles as non-justiciable *i.e.*, non enforceable by the Courts in Part IV, besides the justiciable Fundamental Rights in Part III of the Constitution, has evoked some criticism. But the wisdom of the Constitution-makers is justified, if not by anything else, by the subsequent creation of specific International convention on Economic, Social and Cultural Rights. The story of Human Rights cannot be complete without this latter category of Rights, and the Constitution of India would not have been glorious if Part IV had been omitted. Government of India very recently enacted The Protection of Human Rights Act 1993, under which National Human Rights Commission is constituted to supervise and monitor the condition of Human Rights and recommend for their implementation.

In recent decisions of the Indian Supreme Court one finds extensive reference to Human Rights "Today, Human Rights jurisprudence in Indian has a constitutional Status". Says *Krishna Iyer J.*, in *Sunil Batra (No.2)*. In interpreting constitutional and statutory provision the judges said that the Court must forget the core principle found in Article 5 of the UN Declaration of Human Rights (No one shall be subjected to torture or to crucial, inhuman or degrading treatment or punishment).

Doctrine of Judicial Review :

Judicial review is the power of Courts to pronounce upon the constitutionality of legislative acts which fall within their normal jurisdiction to enforce and the power to refuse to enforce such unconstitutional laws.

The system of judicial review or legislation on the grounds of violation of Fundamental Rights, rests on the inevitable logic of the following propositions : (a) Written

Constitution is a legal document; (b) The interpretation and application of all legal instruments is the function of the judiciary; (c) The Constitution imposes limitation on all organs of the state; (d) Fundamentals Rights guaranteed by the Constitution constitute limitations on the state. It is, therefore, the right as well as the duty of the competent Court, to declare any law which violates any of the Fundamental Rights as unconstitutional. In short, under any Constitution where the foregoing propositions prevail, the competent Courts usually the Supreme Courts and High Courts, become the protectors or the custodians or the guardians of the Fundamental Rights.

Writ Jurisdiction and Enforcement of Human Rights :

Mere declaration of fundamental rights is meaningless unless there is an effective machinery for enforcement of the rights. As stated earlier, that it is remedy which makes the right real. If there is no remedy there is no right. Every Constitution provides a suitable machinery for enforcement of the fundamental rights. Indian Constitution makers provided a machinery and procedure under Articles 32 and 226 of the Constitution.

Article 32(1) guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of Fundamental Rights conferred by Part III of the Constitution. Clause 2 of Article 32 confers powers on the Supreme Court to issue appropriate directions or orders or writ, including writs in the nature of *Habeas Corpus*, *mandamus*, *prohibition*, *quo warrant* and *certiorari*. For the enforcement of fundamental rights, under clause 3 of Article 32, Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). Clause 4 says that the right guaranteed by Article 32, *i.e.*, right to move the Court, shall not be suspended except as otherwise provided for the

Constitution. Article 32, thus provides for an expedited remedy for the protection of the fundamental rights from legislative and executive interference. Its power is widest when compared with other Constitutions. Article 226 is substantially of the same effect as Article 32(2).

It is clear from the proceeding sections that it is the constitutional duty of the judiciary to interpret, expand and enumerate rights for the purpose of progressive realisation of Human Rights. The Courts, however, cannot go beyond the constitution. The conception of rights as a limitation on state power implies that Courts can check and restrain the state organs from doing harm to the Human Rights. The doctrine of judicial review prevents the state from becoming autocratic and authoritarian.

Public Interest Litigation :

In India, public interest litigation made the Courts accessible to the poor and deprived. The judicial activism has enforced the philosophy of social justice and developed the concept of collective and social rights. All these developments help to transform the abstract declaration of rights into reality. For social activists, the Court is an arena of struggle, a struggle committee for Human Rights.

Conclusion :

We must look at the rights in to-day's context as a source of 'empowerment'. Recognition of rights by the Constitution is, no doubt, a progressive step. Further, a creative interpretation of these rights by the Courts, and an expansion of their meaning in relation to social transformation is another imperative task of the struggling masses. There is hope, that these rights would be important agendas around which people's movements can rally around. After all rights are never given but taken. But institutionalization of these rights into natural life and consciousness is only possible by a creative judiciary.

References :

1. Durga Das Basu, Human Rights in Constitutional Law, Prentice - Hall, 1994.
2. Jain, Indian Constitution.
3. Markandan, K.C. Directive Principles of State policy in the Indian Constitution (Jalandhar : ABS Publications, 1987).
4. PGDHR Course Material, University of Hyderabad.

A CRITICAL ANALYSIS ON THE LATEST AMMENDMENT TO THE PROVISIONS OF THE NEGOTIABLE INSTRUMENTS ACT 1881 (AS AMENDED BY ACT 55 OF 2002)

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"Judgment is nothing but interpretation of law in its true sense" "judgment coupled with justice is the motto of a civilised society"

... Professor Taylor.

who is an eminent British Industrial Psychologist and who aimed at "Equal Justice to all".

"Justice at the door steps"

is the call of the day of the Indian Judiciary. With that aim only, much legislation like Lok Adalats, Alternative Dispute Resolution Scheme for legal disputes and legal literacy camps *etc.*" are being conducted even in remote villages by enlightening the general public by providing the legal awareness to the public and of late, the Honourable High Court of A.P. has made it a point that at least one village under the jurisdiction of a Taluk Chairman of Mandal Legal services committee shall be made a "Dispute Free Village" before 9th of November, which is the Legal Services Day.

Considering the latest amendment to the Negotiable Instruments Act, it is clear that the Government's policy is aimed at

"Justice with economic reforms"

and therefore the Standing Committee on finance and other representations have based their recommendations in formulating the present amendment *i.e.*, Act 55 of 2002, which has liberalised many stringent factors like limitation, compounding of the offences, speedy disposal through summary trial, enhancement of punishment *etc.*

Because of the lack of interpretation of law in its true sense, there arise the so-called "Grounds of Appeal".

Considering the Act 55 of 2002, in brief,

The substitution of new Section 6 gave a detailed meaning of the cheque in the 'electronic form' and 'truncated cheque', in this computer age. Amendment to Section 64 is also aimed at detecting the fraud, forgery, tampering and destruction of the negotiable instrument, by enabling the drawee bank to demand for further information regarding the truncated cheque. Amendments to Sections 81 and 89 provided for *prima facie* proof of payment with a certificate on the foot of the printout of the electronic image