

Dattopant Thengadi
National Board for Workers Education & Development

Ministry of Labour & Employment, Govt of India

Human Rights

Often, we see ourselves surrounded with the questions like what are the rights, (?) what rights constitute human rights, (?) what is their nature (?) and who is responsible for upholding them (?). This paper the aims of to provide answers and quick insight into the enforcement aspect of the human rights.

Introduction:

'Right' is the power which the man has, to make a person or persons to do or restrains from doing certain act or acts so far as the power arises from society imposing a legal duty upon the person or persons. The law protects the legal right of every citizen. By being a citizen of the country, the people are given the legal right. It is the duty of every individual to protect the rights of each individual.

Human rights have become the cornerstone of every country in the world since their adoption by United Nations. However, states being the representative organs of people, the rights guaranteed by international law of human rights need to be institutionalized to augment the rights of everyone at the national domain. By such institutionalization with a constitutional guarantee, they try to protect the fragile nature of individual against the national and international threats

The denial of human rights and fundamental freedoms not only is an individual and personal tragedy, but also creates conditions of social and political unrest, sowing the seeds of conflict within and between societies and nations.

What are human rights:

Human rights are rights we have simply because we exist as human beings - they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty.

Section 2(1) (d) of the Protection of Human Rights (PHR) Act defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.

Nature of human rights:

1. Universal and inalienable:

The principle of universality of human rights is the cornerstone of international human rights law. This means that we are all equally entitled to our human rights.

Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

2. Indivisible and interdependent

All human rights are indivisible and interdependent. This means that one set of rights cannot be enjoyed fully without the other. For example, making progress in civil and political rights makes it easier to exercise economic, social and cultural rights. Similarly, violating economic, social and cultural rights can negatively affect many other rights.

3. Equal and non-discriminatory

Article 1 of the UDHR states: "All human beings are born free and equal in dignity and rights." Freedom from discrimination, set out in Article 2, is what ensures this equality.

Non-discrimination cuts across all international human rights law. This principle is present in all major human rights treaties. Nondiscrimination is also the central theme of two core instruments: the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women.

4. Both rights and obligations

All States have ratified at least 1 of the 9 core human rights treaties, as well as 1 of the 9 optional protocols. Eighty per cent of States have ratified 4 or more. This means that States have obligations and duties under international law to respect, protect and fulfill human rights.

The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfill means that States must take positive action to facilitate the enjoyment of basic human rights.

HUMAN RIGHTS: ENFORCEMENT MECHANISM

1. Human Rights Act, 1993

India being a party to a number of international legal documents on human rights and to give effect to Art 51(c) of the Constitution of India, it enacted the 'Human Rights Act in 1993' to extend a speedy protection mechanism for the promotion and protection of human rights. The objective of the Act is to establish a Commission of Human Rights both at the level of Union and States. It also proposes to establish Human Rights Courts at the District level in order to address the issue of human rights that need to be redressed at a quick span. In 2019, the act was amended and brought in a number of provisions for the effective functioning of the Commission. Since the implementation of the Act, the Government of India and the States in the country established commissions of Human Rights.

2. Judicial organs (Hon'ble Supreme Court and High Court)

The judiciary is an important and vital organ to promote not only the principles of democracy and the rule of law, but also ensures that human rights are protected in the true spirit and philosophy with which they are advocated. As per the provisions of the Constitution, especially, directive principles of state policy, there is an inherent obligation on the state to take affirmative action in many areas to usher the fundamental rights. If state fails to discharge its obligations, the judiciary is the only natural organ which can compel a state to take positive action in order to make the rights effective.

Supreme Court of India

Being the highest court of the country, its decisions are binding on all legal organs and people. It has a number of inherent powers to exercise to uphold principles of rule of law and the provisions of the constitution. It exercises powers to issue various writs and orders under Article 32 of the constitution to protect the fundamental rights of the citizens guaranteed under the constitution. Under Article 131 it exercises jurisdiction in case if there arises a dispute between the Union and State or between States apart from other jurisdictions to entertain cases of civil and criminal nature

High Court of States

There are 25 High Courts in India. The High Courts are the highest judicial authority of a State. They have judicial and administrative powers. Accordingly, the administrative province of High Court extends to all the lower courts and tribunals working in a state or jurisdiction conferred by law. On the lines of the Supreme Court, the High Court's being constitutional courts have a number of powers to

protect the rights of citizens. According to Article 226, the High Courts are empowered to issue writs of various kinds to protect the constitutional rights of affected people. The powers of a High Court in comparison to the Supreme Court are very wide and far to issue writs in the Protection and Promotion of constitutional rights in the sense that Supreme Court can issue writs under Article 32 only for the enforcement of fundamental rights and no other rights. Thus, the provisions of Article 32 and 226 confer unfettered powers on judiciary not only to augment the rights guaranteed under the constitution, but also to inject the philosophical framework of international law of human rights.

3. National Human Rights Commission:

The National Human Rights Commission, India has been set up by an Act of Parliament under the Protection of Human Rights Act, 1993 for the protection and promotion of human rights. The Head quarter of the Commission is New Delhi. The functions of the Commission as stated in Section 12 of the Act and apart from enquiry into complaints of violation of human rights or negligence in the prevention of such violation by a public servant, the Commission also studies treaties and international instruments on human rights and make recommendations for their effective implementation to the Government.

The Commission is responsible for spreading of human rights awareness amongst the masses and encouraging the efforts of all stake holders in the field of human rights literacy not only at the national level but at international level too. NHRC is a unique institution because it is one of the few National Human Rights Institutes (NHRIs) in the world whose Chairperson is the former Chief Justice of the country. The world looks at NHRC of India as a role model in promoting and monitoring effective implementation of promotion and protection of human rights.

The NHRC, India plays an active role in coordinating with other NHRIs of the world to enhance awareness from the perspective of human rights.

4. State Human Rights Commission

The Protection of Human Rights Act of 1993 is the reason for the creation of the National Human Rights Commission. This act also allows the creation of the Human Rights Commission at the state level.

This body has to ensure that there is no violation of the human rights related to subjects covered under the state list (List-II) and concurrent list (List-III) of the seventh schedule of the Constitution of India. Currently, 26 states have already made their respective State Human Rights Commission. Currently, 26 states have already made their respective State Human Rights Commission.

The major functions of the States Human Rights Commission are as follows:

To make sure that no one is violating human rights and that all the government officials are doing their duties honestly, to mediate the pending legal proceedings including allegations of human rights violations, to devise steps to effectively implement constitutional and other legal provisions that provide a shield to human rights and to spread human rights literacy and make people aware of the rights and measures that are present to protect their rights.

5. Commissions on Women, Children, Minority and Scheduled Castes and Scheduled Tribes

The Government of India in accordance with international and national obligations since independence adopted a number of policies and enacted special legislations extending a wide variety of concessions to enrich these people on par with other sections of the society.

In order to integrate these people with other advanced groups of the polity, to provide quick span of justice, to protect their rights and to promote their welfare, the government of India in order to discharge its international and national legal commitments, established various independent commissions to help them to achieve tenets of social justice philosophy of human rights.

One of the Landmark Judgements of Human Rights law in India

Vishaka and Ors. v State of Rajasthan (1997): This case showcases one instance of discrimination against women. An NGO and a women's rights group known as 'Vishaka' along with four other organizations came together and filed a PIL against a brutal gang rape. It laid its focus on the enforcement of the fundamental rights of women at the Workplace under the provisions of Article 14, 15, 19, and 21 of the Constitution of India, it also raised the issue of the need for protection of women from sexual harassment at Workplace.

The Court rose to the occasion and did come up with several guidelines to stop sexual harassment at workplaces and these guidelines are popularly known as Vishakha Guidelines. The Court declared that in order to meaningfully dispose of the case, a set of guidelines are necessary. The Court defined sexual harassment as any physical touch or conduct, any unpleasant taunt or misbehaviour, showing of pornography and asking for any kind of sexual favours. It was held that sexual harassment at the workplace should be informed, produced and circulated. Every act of harassment shall be dealt with in an appropriate manner which shall include criminal proceedings and disciplinary action. For the time-bound and effective redressal of complaints, a robust mechanism should be in place at workplaces. A

complaints committee should be put in place which should be headed by a woman and more than half of its members should also be women. In order to prevent any pressure from the higher-ups at the workplace, a third party like an NGO should be involved. Moreover, concrete steps must be taken to create awareness at the workplace as to what sexual harassment is and how to approach appropriate people if someone is harassed at the workplace.

Seventeen years after the Vishakha Guidelines were pronounced, the Parliament passed the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

