
Human Rights: Privilege for Citizens, Dream for Refugees?

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ABSTRACT

Human rights are those rights which are innate to each and every human on this planet, regardless of nationality, gender, race, religion, language, ethnicity, belief or any other status. It includes various rights similar to freedom from slavery, right to life and liberty, freedom of speech and expression, right to employment, right to education, right to work and many others. Every single individual, whether a citizen or a refugee, is entitled to enjoy these basic human rights.

Over the last few years, the sphere of human rights has gradually expanded, and it has developed to incorporate certain specific standards for children, women, minorities and other vulnerable groups. The drafting of the Universal Declaration of Human Rights (UDHR) was a landmark document in the chronicle of human rights. Hence, the substance of the rights which were proclaimed and adopted by the General Assembly in the UDHR (Universal Declaration of Human Rights) was incorporated in the Constitution of India by the Constituent Assembly.

The article focuses upon the situation of refugees in India, what human rights are provided to them and what policy India follows for them. Further, it throws light upon how the Constitution of India encompasses various human rights in the form of fundamental rights, fundamental duties, Directive Principles of State Policy, various other political rights. In addition to this, the article also deals with the materiality of these human rights, in respect of citizens and refugees.

Key Words: Human Rights, Citizens, Refugees, Constitution of India, materiality.

“Human Rights are not a privilege conferred by the government. They are every human being’s entitlement by virtue of his humanity.” -Mother Teresa

INTRODUCTION

Human rights are those moral principles which describe certain principles of human behaviour which are constantly protected as legal and natural rights in the national and international law. They are commonly considered as inalienable rights and are deemed to be inherent in all humans irrespective of their age, origin, ethnic group, religion, nationality or any other status. They impose the rule of law and inflict an obligation on persons to respect the human rights of others. They are important for ensuring that all human beings are treated

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equally, therefore, they are essential for an efficient standard of living. These rights are bifurcated into two categories: political and civil rights, and social rights. These rights are important because it limits the government's authority that affects the independence of an individual. These rights are based on mutual respect, equality and dignity, despite of the nationality of a person, his religious beliefs and others. The basic human rights, *inter alia*, include the following characteristics:

- a. Universal: They are for everybody in the world.
- b. Inalienable: It cannot be separated from anyone.
- c. Interdependent and indivisible: The authority cannot choose between that which community or persons should be respected and which should not be.
- d. Human rights can be violated: They are inalienable, but they can be violated which stops people from enjoying their rights, nevertheless, the rights still do not eradicate completely.

1. REFUGEE AND HUMAN RIGHTS

When we hear the term refugee, the first thing that comes to mind is the human rights of such people and the regulation of the same. Refugee has been defined under the International Convention dealing with the issue of refugees of 1951 i.e. Convention on Status of Refugees and Protocol of 1967 as "*a person owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of that protection of that country; or who, not having a nationality and being outside a country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.*"²

Hence, when a person is being forced to leave his own nation on grounds mentioned in Article 1 as mentioned above is known as refugee. The convention is regarding the rights of refugee as well as the responsibility of the host nations. India is not a signatory to the convention of the year 1951 nor of 1967 as the economic, political factors prevented it from being a signatory. Being a developing country, rectifying the conventions could bring colossal number of obligations and massive resources would be occupied for the refugee, which were already insufficient for the existing population and it may also impact the security of the country. At the time of convention, it was felt that the same was not solving the problems which the nation was facing and hence, India did not sign the convention.³ Nevertheless, the provisions of the convention have attained the standing of customary international law and moreover, Article 51 (c) of our constitution promotes respect for international law.

² The Refugee Convention 1951, Article 1(A)(2)

³ Aakash Sai, 'Human Rights Of Refugees And Refugee Laws In India And Globally' (*Legal Desire*, 14 March 2018) <https://legaldesire.com/human-rights-refugees-refugee-laws-india-globally/#_ftnref26> accessed 19 August 2020

As it is an old age tradition to accustom the refugee from different parts of the world; India is the host of majority refugee population which majorly comprises of citizens from Bangladesh, Afghanistan, Pakistan, Bhutan, Sri Lanka and others. As per the reports, in the year 2019, India hosted 207,000 refugees where the female population was 48.8 percent.⁴ To deal with such immense number of refugees, our country has adopted different treatment for diverse sets of refugees, for example, the Chakams were provided with inadequate facilities which were confirmed by NHRC and were expelled in the year 1988, whereas, on the other hand, Tibetan refugees have received improved treatment in comparison to other refugee groups.⁵

In India, refugees are referred as 'aliens' and the laws which are applicable to them are those which are applicable to any alien individual to the country. The Central Government alone has power to make laws regarding citizenship, naturalization and aliens as it falls under entry number 17th of Seventh Schedule⁶ i.e. Union List, but it has failed to provide with a specific legislation which would deal with the status of refugees and regulate their entry in the country.

The word 'alien' appears in the Constitution of India under Article 22, Para 3 and Entry 17, List I, Schedule 7, under Section 3(2)(b) of the Indian Citizenship Act, 1955, under Section 83 of the Indian Civil Procedure Code. Enactments governing aliens in India are the Foreigners Act, 1946 under which the Central Government is authorized to regulate the entry of aliens into the country. It defines a 'foreigner' as 'a person who is not a citizen of India'.

However, the act is unsuccessful in distinguishing between tourists, workers, fugitives, migrants, refugees and travellers, as these may have different reasons to enter the country. The act compels them to prove their identity⁷, control their movements⁸, activities⁹, and also, they are required to present themselves at police station¹⁰.

The Registration Act, 1939 deals with the registration of foreigners entering, being present in and departing from India. Moreover, the Passport Act, 1920 and the Passport Act, 1967 deals with the powers of the government to impose conditions of passport for entry into India and along with the same, holds power to issue passport and travel documents to regulate departure from India, of citizens of India. Since, these enactments fail to make any discrepancy between genuine refugees and other categories of aliens, refugees are under

⁴ 'At 17.5 Million, Indian Diaspora Largest in The World: UN Report' (*The Economic Times*, 18 September 2019) <<https://economictimes.indiatimes.com/nri/nris-in-news/at-17-5-million-indian-diaspora-largest-in-the-world-un-report/articleshow/71179163.cms?from=mdr>> accessed 19 August 2020

⁵ 'Refugee Law: The Indian Perspective' (*Lawteacher.net*, 22 July 2019) <<https://www.lawteacher.net/free-law-essays/international-law/refugee-law-the-indian-perspective-law-essay.php#ftn3>> accessed 19 August 2020

⁶ Constitution of India 1951, Article 246, Seventh Schedule

⁷ Ministry of Home Affairs, Foreigners (Production of Proof of Identity) Order, 1983, S.O. 145(E) of 1983 (February 25, 1983)

⁸ Foreigners Order, 1948; Ministry of Home Affairs, Foreigners (Restriction on Movements) Order, 1960, G.S.R. 1454 of 1960 (December 6, 1960)

⁹ Ministry of Home Affairs, Foreigners (Restriction on Activities) Order, 1962, G.S.R. 75 of 1962 (January 16, 1962)

¹⁰ Ministry of Home Affairs, Foreigners (Report to Police) Order, 1971, G.S.R. 1884 of 1971 (December 14, 1971)

constant risk of arrest by the immigration authorities and of their prosecution if they enter India without travel documents.

In order to accustom the refugee in the legislation, a bill named The Asylum Bill, 2015¹¹ was introduced in Lok Sabha by Mr. Shashi Tharoor, which consisted of criteria for recognition as a refugee, exclusion, cancellation and revocation, procedure to apply for asylum, power of authorities and many more principles were laid down in the bill. Nonetheless, the bill was never recognised and therefore, apart from a bill there is not a single statutory act dealing with the status of refugees.

The Apex Court has also played its role by giving various judgments to ease the living of refugees in the country. As in the case of *Louis De Raedt v. Union of India*¹², the Supreme Court held that the fundamental right to life, liberty, and dignity is available to non-citizens of India, though, the judgment varies with circumstances of each individual case.

In addition to the same, the importance of international convention was recognised in the case of *Vishaka v. State of Rajasthan*¹³ where guidelines to guarantee gender equality, right to work with human dignity under Article 14,15, 19(1)(g) and 21 were contained therein. Further, in the case of *Majid Ahmed Abdul Majid Mohd Jad Al Hak v. Union of India*¹⁴, it was held that basic amenities like food and medicines must be provided to the refugees who are in detention. There is ample protection provided to the refugee under the constitution of the country, but the real issue is that they are barely in practice.

In the absence of any central legislature, the role of United Nations High Commissioner for Refugees and National Human Rights Commission (UNCHR) has increased. The UNCHR determines the status of a person as refugee based on the definition in the 1951 Convention Related to the Status of Refugees and other mandates. UNCHR helps people to get registration completed with the organisation which further helps them to find asylum in India. Once the registration process is completed, the claimant receives an Under-Consideration Certificate (UCC) acknowledging the fact that the person has applied with UNCHR India. Refugee cards are issued for recognised refugees which is valid up to two years. The asylum seekers whose application has been rejected can appeal against the rejection, but if they are rejected on appeal, their case is closed.

There is a fine line between asylum seekers and refugees i.e. the refugees are those who fall under the definition of “Refugee” under the UN Refugee Convention and the asylum seekers are the people who are still waiting for the decision by the UNHCR. UCC is not a legal document and it does not replace the Indian Visa. To avail such services, they need to get registered with Foreigners Regional Registration Office (FRRO). FRRO issues stay visa which is granted initially for one year at a time with the approval of Ministry of Human Affairs (MHA) by FRRO and extension of the same visa /residential permit, if justified, is

¹¹ The Asylum Bill, 2015' (164.100.47.4, 2015)
<http://164.100.47.4/billstexts/lstexts/asintroduced/3088LS.pdf> accessed 21 August 2020

¹² 1991 (3) SCC 554

¹³ 1997 (6) SCC 241

¹⁴ Criminal Writ Petition No. 60 of 1997; Crl. W. 60/97

granted by FRRO concerned for 1 year at a time for a maximum period of 5 years. Extension of stay visa beyond five years again requires approval from the MHA.¹⁵

Since India is not signatory of UN Convention of 1951 and 1967 Protocol, thereof, India do not recognise such ID card and Refugee status approved by UNCHR.

2. CITIZENS AND HUMAN RIGHTS

As quoted by Winston Churchill, 'Good citizens are the greatest assets of a country' and therefore, it would be correct to add in the statement that, a country is what it is because its citizens are what they are.

From time immemorial, the rights of man have been a major sphere of concern for all the civilizations. In the earlier period similarly, the concept of fundamental rights and other rights of a man was not exotic to them. The laws during the Vedic Period of India like the 'Dharma' were very well written and have upheld the concept of human rights throughout the growth and development of the civilization. The Indian concept of human rights has always perceived an individual, the society and the universe as one unit. The chapter deals with various human rights which have been entrenched in the Constitution of India in the form of fundamental rights, Directive Principle of State Policies (DPSPs) and Fundamental Duties.

The Constitution of India was drafted by the Constituent Assembly. The Indian Constitution gave and still gives paramount importance to human rights. At that time, when India was struggling for freedom and its basic human rights, as observed by Mr. Ramchandra Guha, there were four factors which led the demand for a declaration of fundamental rights. The first one was the despicable social conditions, especially of the untouchables and women; second was the absence of civil liberty in India during the British rule; third was the grave exploitation of the tenants by the landlords and the last one was the massive cultural mix of different religions, languages and existence of ethnic groups who were exploited by the Britishers.

The Indian Constitution has the most detailed fundamental laws ever adopted, our Preamble declares India to be a Sovereign, Socialist, Secular and Democratic, Republic. It also pledges to provide justice, social, economic and political liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and fraternity assuring the dignity of the individual and the unity and integrity of the nation to all its citizens. Hence, it was observed in the case of *Keshvanand Bharti v. State of Kerala*¹⁶, by the Supreme Court that the UDHR may not be a binding instrument but it clearly proves that India very well understood the concept and nature of Human rights at the time when the Constitution was adopted.¹⁷

¹⁵ E-FRRO Home' (*Indianfro.gov.in*) <<https://indianfro.gov.in/eservices/home.jsp>> accessed 15 August 2020

¹⁶ A.I.R. 1973 S.C. 1461 at 1510

¹⁷ 'Human Rights in India- An Overview' (*Shodhganga*) <https://shodhganga.inflibnet.ac.in/bitstream/10603/6653/11/11_chapter%203.pdf> accessed 16 August 2020

2.1 Fundamental Rights as enforceable Human rights

The rights which are judicially enforceable are the fundamental rights consisting civil and political rights, mostly for the citizens of India. These rights are enshrined in Part III of the Constitution ranging from Article 12 to 35. These rights comprise of right to equality, the right against exploitation, the right to freedom, the right to freedom of religion, cultural and educational rights and the right to constitutional remedies. Fundamental rights are those natural rights which are inalienable human rights and are available to each and every citizen of India. Hence, these are those basic rights which are recognized as natural rights and are inherent in the status of 'citizen' of a free country.¹⁸

The Constitution of India has further distinguished fundamental rights into two categories: 1) Fundamental rights which are available to the citizens and 2) Fundamental rights which are available to all persons residing within the territory of India for the time being subjected to its jurisdiction.

The fundamental rights which are only available to the citizens of India include:

1. **Article 15:** It is related to prohibition of discrimination on the grounds of race, religion, sex, caste or place of birth.
2. **Article 16:** It is related to the ailment of equal opportunity for all citizens in the matters of public appointment.
3. **Article 19:** It provides for protection of rights like freedom of speech and expression, to form associations and unions, to assemble peacefully and without arms, to reside and settle in any part of the territory of India, to move freely throughout the territory of India and to practise and profess or to carry on any occupation, trade or business. Non-citizens cannot claim fundamental rights which are provided under Article 19.
4. **Article 29:** It provides for the protection of interests of minorities.

The fundamental rights which are available to all persons are the remaining rights which use the word 'person' in it. These rights are available to all the persons of this country including the people who come as tourists or in any such capacity. These persons are entitled to the protection of their lives in accordance with the Indian Constitution. They also have the right to life and that too, with dignity as long as they are in India.

In the case of *Chairman Railway Board and others v. Chandrima Das*¹⁹, the right encompassed in Article 14 was extended towards a Bangladeshi national. Article 14 guarantees equality before law and equal protection of laws within the Indian territory and is applicable to all persons irrespective of citizenship.

In addition to the above, Article 21²⁰, which encompasses Right to Life is not only available to citizens of India but, is also available to non-citizens. The court has observed that the word

¹⁸ *Ibid* 3

¹⁹ A.I.R. 2000 (1) S.C. 2EO

²⁰ Constitution of India 1951, Article 21

'life' has been included as a basic human right in the constitution and it should not be given any narrower meaning than as understood in the UDHR of 1948.

2.2 Directive Principles of State Policy as non-enforceable Human rights

DPSPs are non-enforceable rights which are provided in Part IV of the Constitution and are mainly social and economic in character. Despite the fact that they are non-enforceable, **Article 37**²¹ makes it clear that this fact does not weaken the duty of the State to apply them in making laws, since they are fundamental in the governance of the country. Hence, through various landmark judgments of the Supreme Court, many of these principles have been read into Article 21 (the right to life and personal liberty) and as a result they have been made enforceable. **Article 38, 39, 39A, 44, 51** impose a duty on the state, that it should ensure that the basic rights incorporated in them reach to the masses even though they are not enforceable.

2.3 Fundamental Duties as Human Rights

Fundamental duties have been incorporated in Part IV(A) of the Constitution. There are eleven fundamental duties which an Indian Citizen should adhere to (Article 51A)²². These are: the duties to respect the constitution and the related institutions, to defend the country, to live by the noble ideals of the freedom struggle, to protect the sovereignty and integrity of India, to renounce practices derogatory to the dignity of women, to promote communal harmony, to preserve the cultural heritage, to develop the scientific temper, to safeguard public property, to protect and improve the natural environment.

Human rights and development have a direct co-relation between them. The availability of healthy food, nutrition, employment, shelter, legal aid, health care and such, is very closely linked to the respect for human rights. The people who drafted and found the constitution of our country had a vision for our society, which they wanted to fulfil through this piece of legislation. This vision was replicated in the Preamble, DPSPs and most importantly in the Fundamental Rights. The Fundamental Rights and DPSPs will always remain the product of human rights movement in India.

Dr. Justice A.S. Anand, chairperson of the National Human Rights Commission, has often stressed that it is the obligation of the State to ensure that every citizen of the country has adequate food, good education and the basic standards of mental and physical health, because these are the basic rights which should be respected and made available to them. He has also pointed out that while we are seeking to enforce our rights, we should not neglect our duties and obligations as good citizens; that it is the duty of the citizens to assist the society in order to achieve equilibrium and eliminate the imbalance. He has bellowed for harmony, development, solace, love and not discord, stagnation, misery and hatred, respectively.²³

²¹ Constitution of India 1951, Article 37

²² The Constitution of India 1951, Article 51A

²³ 'State Obligated to Ensure Human Rights of Citizens' (NHRC) <<https://nhrc.nic.in/press-release/state-obliged-ensure-human-rights-citizens>> accessed 25 August 2020

The Constitution of India is rich in the jurisprudence of human rights. It demonstrates a charter, so elaborate in nature with which no other document in the whole world can be compared. And in the wake of this, Part III of the Constitution can be categorised as the 'Magna Carta' of India. The most significant role in the protection of human rights have been the role of judiciary. The courts have evolved and developed as the courts for the downtrodden, ignorant, illiterate, the handicapped and the poor countrymen.

3. MATERIALITY OF THE MUDDLE

3.1 Ground reality of Human Rights: Refugees

The government has rectified and signed many conventions to deal with human rights violation of refugees but many of them are yet to be incorporated in domestic laws. Refugees who come from different countries, apart from facing cultural and language set back ended up in harsh living conditions as the resources are limited which *inter alia* includes water, food, education facilities for children, work opportunities and hence, they face financial and psychological impacts. Sometimes, the refugees also face difficulties in accessing services like opening a bank account, health facilities and such similar necessities.²⁴

Some refuge issues related to Afghan refugees were discussed in a meeting conducted by NHRC which includes, for instance, under Right to Education, a child may not get an admission in any school as he may not have visa, they are unable to get aadhar card which is now mandatory for opening bank account which consequently leads parents not able to purchase school paraphernalia. There is a positive law dealing with the same, but the issue remains the same. The issue to get birth certificate is also aggravating as some state ask for aadhar card of parents, despite it, it's the government's duty to register every child born within the territory of the country.²⁵ Such issues are well grounded in the country.

As the saying goes, right delayed is right denied. Many applications for visa as well as renewal of visa, has led to refugees stay becoming technically illegal. It is an addition to the fear and makes them more vulnerable to the exploitation as they end up working in informal sector. Without possession of permission from official authority, they miss an opportunity to file a complaint with the police authorities. Old handwritten passports are sometimes rejected as the passports have changed because of computerisation.

When a refugee is detained by customs, immigration or police authorities for commission of any of the offences under the earlier mentioned enactments, he is generally handed over to the police and a First Information Report is lodged against him. According to the provisions of these statutes, the refugee may face forced deportation at the established sea ports, airports or the entry points at the international border, if he is detected without valid travel documents. He may also be detained and interrogated pending decision by the administrative authorities regarding his plea for refugee/asylum. A refugee also faces the prospects of

²⁴(Nhrc.nic.in,2019)

<https://nhrc.nic.in/sites/default/files/MINUTES_MEETING_AFGHAN_REFUGEE%20_2019.pdf> accessed 29 August 2020

²⁵ *Ibid* 26

prosecution for violation of the Registration of Foreigners Act, 1939 and Rules made thereunder and if he is found guilty of any offence under this Act, he may be punished with imprisonment which may extend to one year or with a fine up to one thousand rupees or with both.

However, in many cases the courts have taken a lenient view in the matter of punishment for their illegal entry or illegal activities in India and also, by releasing detainees pending determination of refugee status, staying deportation and giving them an opportunity to approach the UBHRC, refugees continue to run the risk of apprehension, detention and prosecution for the violation of the Foreigner's Act, 1946 and the Foreigners Order, 1948.

The Indian Supreme Court has also held that the government's right to deport is absolute. The government often forgets to take into consideration the fact that such people flee from country of origin in order to protect themselves, it is hard for them to arrange documents especially in cases where there is financial backwardness along with the earlier mentioned issues as their own embassy fails to provide them with assistance required. Such people eventually fall for adverse coping mechanism which is destructive for them as well as to the economy and security of our country. Further, due to long pendency of applications, people who essentially require status of refugee losses their interest in acquiring the same.

Where on one hand, citizens of different country are applying for Indian protection, on the other, there are number of Indians who feel that their life is in danger if they continue to reside in India. As per the data available up to 2018, the percentage of such citizens has increased to 996.33 per cent. Such citizens seek political asylum in other countries in order to avoid persecution based on caste, religion, gender and other reasons.²⁶

3.2 Ground reality of Human Rights: Citizens

Inviolable and inalienable, that is what human rights are supposed to be, but this fact can be disregarded in the light of the current situation of India. The year 2020 witnessed several major blows on human rights in India, starting from repressive laws curbing freedom of expression to intimidation and harassment of various communities and minority groups.

Human rights issues which have been reported by the NHRC included complaints of torture, custodial death (police and judicial), death in police encounter, exploitation of children, abuse of power, illegal arrest, custodial rape, arbitrary killings, forced disappearance, arbitrary detention and arrests, life threatening conditions of the prisons, continued internet shutdown. In addition to this, discrimination and widespread violence and hatred on the basis of sexual orientation, religious affiliation, caste, race, tribe has also occurred.

The human rights statistics as on 4th August, 2020 reflects that, there are 18,589 cases pending which are related to custodial death (police and judicial), death in police encounter,

²⁶Mukesh Rawat ,'996% Rise in Indians Seeking Political Asylum in Past 10 Years' (*India Today*, 21 June 2019) <<https://www.indiatoday.in/india/story/996-rise-in-indians-seeking-political-asylum-in-past-10-years-1552869-2019-06-21>> accessed 26 August 2020

bonded labour, against children, against women, against SC/ST/OBC and others.²⁷ Out of these pending cases only 7,421 has been disposed which shows the inefficiency of the under-resourced and overburdened courts in India. The lack of accountability of such harsh acts has persisted at every level of government, which has directly or indirectly contributed to widespread exoneration.

No credible investigation has been performed against the growing lynching by mobs on minority groups, communities and often these acts have been carried out by groups which are claimed to be affiliated with a certain political party. The inflammatory speeches have added fuel to the fire and encouraged further violence.²⁸

Illegal or Politically motivated Killings

There are many reports showing that the government and people related to the ruling party have engaged in unlawful killings which include extrajudicial killings of alleged criminals and agitators. According to the data of 2018-19, provided by the Ministry of Home Affairs, the NHRC has reported 115 cases of death in police encounter nationwide. This number was less in the previous year. The reports related to custodial deaths, in which detainees or prisoners died or were killed in police or judicial custody have continued to increase. The NHRC has registered more than 200 complaints, just in the month of January, 2019 related to judicial and custodial death. This record has increased from an average of four custodial deaths in the passage of 2001-2010.

The AFSPA has been operative in Manipur, Assam, parts of Mizoram and Nagaland. Under this act, a state or union territory which has been designated as 'disturbed area' by the central government, gives power to the security forces to use deadly force in order to maintain law and order and arrest anyone against whom any reasonable suspicion exists. Also, they can refuse to tell the detainees, the ground on which they are being arrested. In the veil of this act, the security forces have severely misused the power provided under this act and there have been reports of many illegal killings and disappearances. Many human rights organizations have continued to appeal to the court to repeal this law and they have presented many cases of human rights violation.²⁹

Disappearances

There have been many allegations that police have failed to file the required reports of the persons detained which has resulted in more than hundred cases of unresolved disappearances, but the police officers and government has denied these claims. Further, there have been many allegations on the police of Jammu & Kashmir for enforced disappearances. But as usual, the claims were denied by the police officers.

²⁷Monthly Salient Statistics of Cases Registered / Disposed by NHRC During July 2020' (NHRC, 2020) <<https://nhrc.nic.in/complaints/human-right-case-statistics>> accessed 25 August 2020

²⁸Aijaz Rahi, 'World Report 2019: Rights Trends in India' (Human Rights Watch, 2019) <<https://www.hrw.org/world-report/2019/country-chapters/india>> accessed 27 August 2020

²⁹'India 2018 Human Rights Report' (2018) <<https://www.state.gov/wp-content/uploads/2019/03/INDIA-2018.pdf>> accessed 27 August 2020

Torture and other Cruel or Degrading Treatment or Punishment

The Constitution of India expressly prohibits torture but there have been reports that government officials, especially police have practised such inhumane acts. There have been many cases of custodial death which were the results of police beatings. Under the evidence law, a coerced confession is not admissible in the court, but the human rights activists and citizens have allegedly claimed that the authorities have tortured them for confession.

Also, under the repealed Prevention of Terrorism Act and TADA, confessions made to the police are also admissible despite the reality check. On 13th July, 2018, a Dalit man who was 45-year-old, named B. Murthy was discovered hanging in the police station of Mandaya, Karnataka. He was tortured in police custody for suspected motorcycle theft. Those police officers were suspended, and the case was taken by the Criminal Investigation Department but there was no findings and conclusion to the case.³⁰ Not only this, there are cases of custodial rape of females as well as males by the police officers. The NHRC has investigated cases involving police officers who have raped in custody, but the actual number of cases have not come out because of social stigma and fear.³¹

Arbitrary Arrest or Detention

The Indian Constitution prohibits arbitrary arrest and detention but there have been many cases where the police have held suspects without registering their arrests and therefore tortured and mistreated them. Under normal circumstances, police have to present the person in front of the magistrate within 24 hours of the arrest but due to under-resourced and overburdened courts, and a lack of legal safeguard, the arbitrary detention process has been lengthy. Also, family members are allowed to meet the detainees but, in many cases, this was also not seen.³²

4. CONCLUSION AND RECOMMENDATIONS

The ground reality of protecting the human rights are far from the written laws even though the protection of human rights has been one of the major issues of concern during various international conferences. Numerous international enactments have been incorporated for this purpose and even steps have been taken at national level to protect the human rights but only for citizens and does not include refugees. The Protection of Human Rights Act, 1993 was enacted in India and under this, the National Human Rights Commission and State Human Rights Commission were required to be constituted. The objective was to protect and deliver justice to people at every level. The biggest success of the commission is to raise awareness for human rights in India and to initiate such discussion on the same. The ground-breaking truth is that, the NHRC is a toothless tiger with no authority to ensure that its recommendations are implemented, as the same are not binding. Further, the case where financial compensation is recommended by NHRC is paid by the concerned authorities,

³⁰MT Shiva Kumar, 'Custodial Death Triggers Protests in Mandya' (*The Hindu*, 13 July 2018) <<https://www.thehindu.com/news/national/karnataka/suspected-bike-lifter-dies-in-police-custody-in-mandya/article24407467.ece>> accessed 25 August 2020

³¹ *Ibid* 32

³² *Ibid* 32

hence, leaving the commission with very less power in getting the guilty punished. It can be concluded that to achieve the objectives of the act, NHRC should be made an independent body with regard to the financial and personnel matter and instead of keeping them reliant on police department, they should be given their own team for investigation. Additionally, as per the reports published by Transparency International India in 2019, there are three states (Arunachal Pradesh, Mizoram and Nagaland) which do not have State Human Rights Commission (SHRC). Further, there are ten states, *inter alia*, Chattisgarh, Jharkhand, Maharashtra, Manipur etc. which are facing issues of no Chairperson and acute shortage of staff. We would like to recommend that firstly SHRC should be established in every state with efficient working mechanism and timely recruitments. Hence, section 21(1) and section 30 of the act should be amended in order to make the constitution of the State Human Rights Commission, mandatory for the state governments.

The advocates of Human Rights agree that even though the UDHR has now existed for more than 60 years nonetheless, it remains more of a dream than reality. The reports by various human rights defender organizations and other sources show that individuals, be it citizens or refugees, they are tortured or knocked about in at least more than 80 countries, people still face unfair trials in more than 50 countries and even though in many countries there is freedom of expression, but they are still restricted in at least 60 countries.

India has many provisions in the Constitution for human rights of citizens but no comprehensive legislation is in place for the human rights of refugees. The government is not ready to ratify the already existing convention on refugee, it is not even enacting its own domestic legislation yet it continues to allow large number of refugees from across the world to cross the boundaries. In order to cope up with the increasing number of refugees, a central legislation is required to regulate them and provide them the basic level of protection because the refugee rights in our country are prerogative at the hands of administrative authorities. Also, the government should allow private sponsorship developed parallel to government scheme in order to ease the financial burden on the government. Not only this, the government is in dire need to ratify the International Convention against Torture that would enable the legislature to bring domestic law in furtherance of the same.

Human Rights have existed for a very long time now and they have been encompassed in the UDHR and in many other international bodies related to the human rights law. Even after this, the current condition in India is off the beaten track from the principles ideated in the Declaration. We have observed that the application of human rights law is difficult, and the disposition of complaint takes many years and brings a financial burden. The present laws act as a barrier from total violation of human rights, but they are not sufficient in providing the required protection and, the abuses continue to happen on a daily basis. Corruption and discrimination are pervasive in India. Politically motivated killings and imprisonment without a trial are common practices and are overlooked even in countries which follow democracy like us. The truth is that, peace can only last in a country where human rights are respected, where people are not devoid from basic amenities of living and where the individuals are free.