***Notes prepared and uploaded by-Dr Adidur Rahman***

***Dept. of Pol. Science, HAAC***

***For 6th sem. (Major), paper-6.6.***

**Topic: Constitutional Provisions and Legal Framework of Human Rights:**

India is a regarded as the world largest democracy and second most populous country in the world. The framers of the Indian constitution embodied a number of provisions in the constitution to protect individual rights. As the source of ultimate authority, the constitution provides the legal framework for the guarantee of human rights manifested in its Preamble, Fundamental Rights, Directive Principle of States policy, Fundamental Duties. Apart from constitutional provisions, there are a number of statutory provisions for the promotion and protection of human rights in India. They may be elaborated in the following ways:

**1. Preamble:**

The Preamble to our Constitution is the mirror to understand the objective of the Constitution. Preamble begins with the words “*We, the people of India, having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic…”.* Speaking about the said words of the preamble of Indian Constitution, Bhagwati, J., while delivering the judgment in Dr**.** *Pradeep Jain v. Union of India***,** observed that they embody the hopes and aspirations of the people of India.

The opening words of the preamble are identical with the opening words of the Charter of the United Nations viz, “*We the people of the United Nations****...*** ”which represents a new trend in the International field which might have inspired the framers of our Constitution.

The word ‘sovereign’ denote that the supreme power lies with the people. The word ‘socialist’ was incorporated to the Preamble by the 42nd Constitutional Amendment Act 1976, so as to accentuate the socialist basis of the constitution. The word ‘secular’ implies that India is a secular state and the term ‘democratic’ denotes that the Governments derive its authority from the will of the people. The Preamble, however, does not make it clear as to what type of democratic republic has to be established.

The preamble reflects the high purposes and noble objectives of the framers of the Constitution. In fact, the words of the preamble embody the hopes and aspirations of the people and seek to reproduce the social, economic and political philosophy underlying the Constitution. The preamble of the India constitution has resolved to secure to all its citizens the following four objectives-Justice, Liberty, Equality of status and Fraternity assuring the dignity of the individual and the unity and integrity of the nation. Thus, the Preamble itself is very clear document about the protection of human rights in India.

**2. Part-III of the constitution: Fundamental Rights:**

The framers of the Indian constitution incorporated a host of Fundamental Rights in Part**-**III of the constitution (Art.14-35). The Supreme Court of India recognizes these Fundamental Rights as ‘Natural Rights’ or ‘Human Rights’. Chief justice Subba Rao in Golak Nath *Vs*. State of Punjab aptly observed, *“fundamental rights are the modern name for what have been traditionally known as natural rights.”* The constitution has empowered the Supreme Court and High Courts to issue prerogatives writs for the protection and enforcement of these rights.

 The Universal Declaration of Human Rights contained civil and political as well as economic, social and cultural rights. While Civil and Political rights have been incorporated in part III of the Indian constitution and economic, social and cultural rights have been incorporated in Part IV of the Constitution.

Thus, the human rights enshrined in the form of Fundamental Rights are characterized as the ‘Magna Carta’ of the constitution is discussed details so as to understand constitutional framework of human rights in India. It includes- 1. Right to equality (Art 14-18), 2. Right to freedom (Art.19-22) 3. Right against exploitation (Art.23-24), 4. Right to freedom of religion (25-28), 5. Cultural and educational rights (29-31), 6. Right to constitutional remedies (Art. 32).

The Art.32 is considered as the cornerstone of our constitution. While commenting on the Art., Dr. Ambedkar said-“*if i was asked to name any particular article of the constitution as the most important, an article without which this constitution would be a nullity, I would not refer to any other article except this one. It is the very soul of the constitution and the very heart of it.”*

 Thus, the Supreme of India has been assigned a major role of protector and custodian of Fundamental Rights by the Art.32 itself. It has the power to writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari* for the enforcement of any of the Fundamental Rights, whereas under Art. 226 the High courts can also issue these writs for the purpose of their enforcement.

**3. Part-IV of the constitution: The Directive Principles of State Policy:**

The Directive Principles and State policy (DPSP) are incorporated in Part IV of the Indian constitution (Articles 36-51).These principles are regarded as one of the noble feature of the constitution directed towards achievement of socio-economic and political equality. These principles are not justiceable or mandatory and may be treated like instructions issued to the states. However, Art. 37 of the Constitution lays down that Directive Principles are fundamental in the governance of the country. It shall be the duty of the state to apply these principles while framing laws. They have served as beacons for the legislatures and to courts.

The DPSP may be classified into four main categories on the basis of their objectives. They are- Social, Economic Gandhian and principle for international peace and security.

**a. Social principles**:

* Promotion of educational and economic interest of the weaker sections of the society (Art 46);
* Providing a uniform civil code for the whole country (Art.44);
* Separating judiciary from the executive (Art.50) etc.

**b. Economic principles**:

* inequalities of income is minimized and eliminate inequalities in status facilities(Art.38(2));
* adequate means of livelihood for the citizens and free legal aid to the poor(Art.39(a));
* equitable distribution of the ownership and control of the resources of the community keeping in view the common good(Art. 39(b);
* prevention of concentration of wealth and means of production to the common detriment (Art.39(c));
* equal pay for equal work for both men and women (Art. 39(d));
* preventing abuse of labour including child(Art.39(e));
* ensuring of child development(Art,39(f));
* right to work, education and public assistance in cases of unemployment, old age, sickness and disablement(Art.41);
* just and humane conditions of work(Art,42),
* living wages, decent standard of life(Art.43);
* participation of workers in the management of industries(Art.43(a)) etc.

**c. Gandhian principles:**

* Organization of village Panchayat as units of self-government (Art.40);
* Promotion of cottage industries in rural areas (Art. );
* Improving the level of nutrition, standard of living and public health and prohibition of intoxicating drugs and drinks except for medical purposes (Art.47)
* Organizing agriculture and animal husbandry on modern and scientific lines(Art,48);
* Prohibition of slaughter of cows, calves and milch cattle (Art. 48);
* State shall strive to protect the monuments and preserve the places of historical and national importance (Art.49) etc.

**d. International principles:**

Art.51 of the constitution directs that India shall strive:

* To promote international peace and security;
* To maintain just and honourable relations between nations;
* To foster respect for international law and treat obligations;
* To encourage settlements of international disputes through arbitration.

Thus, from the above discussion we can say that just like the Fundamental Rights, the DPSP are considered as the bed-rock of human rights in the constitution. A large number of socio-economic and cultural rights of international covenant have been enshrined in it. Because of this S.C. Kashyap rightly remarked **“***The two parts of the Constitution—the Fundamental Rights and the Directive Principles—between them covered almost the entire field of the Universal Declaration of Human Rights”.*

**4. Fundamental Duties:**

The most important point to be noted here is that 42nd Constitution Amendment Act, 1976 has incorporated a detailed list of Fundamental Duties in Part IV (A) of the Indian constitution. It embodies eleven (11) fundamental duties in Art. 51(A)of the constitution. These fundamental duties includes-

1. to protect the sovereignty, unity and integrity of India;
2. to defend the country;
3. to promote communal harmony;
4. to renounce practices derogatory to the dignity of women;
5. to preserve the rich heritage of our composite culture;
6. to protect and to abide by the constitution and respect the National Flag and the National Anthem;
7. to live by the noble ideals of the freedom struggles;
8. to protect and improve the natural environment;
9. to have compassion for living creatures;
10. to develop the scientific temper and spirit of inquiry;
11. to safeguard public property and abjure violence and to strive towards excellence in all spheres of individuals and collective activity.

It is important to mention here that 86th Constitutional Amendment Act, 2002 added a new clause in Art. 51(A) as “a parent or guardian to provide opportunities for education to his child or as the case may be, between the ages of 6 and 12 years”.

**5. Other Constitutional Provisions:**

 Besides, the above constitutional provisions, following are some other constitutional provisions indicating human rights protection. They are:

* No person shall be deprived of his property protected by authority of law (Art.300 (a)).
* The constitution provides full protection to its civil servants under Art. 311.
* No citizen shall be deprived of for inclusion his/her name in electoral roll on the ground of race, religion, caste or sex (Art. 325).
* Elections to the Lok Sabha or to the State Legislative Assemblies are held on the basis of universal adult franchise (Art. 326).

**6. Statutory Provisions and Human Rights in India**:

In addition to the constitutional provisions, there are numerous statutory provisions enacted from time to time for the protection of human rights in India. Following are some of them:

1. Caste Disabilities Removal Act, 1950.
2. Protection of Civil Rights Act, 1955.
3. Immoral Traffic (Prevention) Act, 1956.
4. Children Act, 1960.
5. Maternity Benefit Act, 1961.
6. Dowry Prohibition Act, 1961.
7. Bonded Labour Abolition System Act, 1976.
8. Child Labour (Prohibition & Regulation) Act, 1986.
9. Commission of Sati (Prevention) Act, 1987.
10. SC and ST (Prevention of Atrocities) Act, 1989.
11. National Commission for Women Act, 1990.
12. National Commission for Minorities act, 1992.
13. The Protection of Human Rights Act, 1993, etc.

**7. Institutional Framework and Human Rights:** The constitution of India provided for a quasi-federal system. There is a division of legislative powers between the Union Parliament and State Legislatures. The Union Parliament possesses 97 items, 66 subjects are allocated for state legislature and 47 are made Concurrent jurisdiction of both. The Residuary Powers have been vested with the Centre. In the case of any conflict between Union and State laws, the Union laws shall prevail over the state. Usually the subjects of concurrent list remain under the possession of the Union Parliament. Further, Art. 253 authorize the union parliament to make laws for implementation of any treaty. This implies that the Indian Parliament can adopt laws including human rights related international treaties.

Similarly, the President of India is the executive head of the union. However, the real executive powers are vested with the prime minister and his cabinet who are responsible to the Parliament. The constitution placed the judiciary independent to the executive and legislature. The Apex Court and the High Court acts as the vanguard of human rights of the Indian people. In fact, judiciary in India is fortified with the power of enforcing the constitutional norms including human rights.

More importantly, the National Human Rights Commission came into existence by virtue of the Protection of Human Rights Act, 1993 become an Indian national institutions for the enforcement of human rights. Besides, in order to implement the constitutional rights for the weaker and vulnerable sections of the country, the government has adopted a number of institutional frameworks like the National Commission for Minorities, National Commission for Women and the National Commission for Scheduled Castes and Scheduled Tribes.

**7. Role of Judiciary:**

Independence of judiciary is one of the cardinal features of the constitution. It has become a vanguard and watchdog of human rights in India. The Apex Court of India has declared in the Case of *Ajay Hasia Vs. Khalid Mujib* that it has particular responsibility ‘to enlarge the range and meaning of fundamental rights and to a advance the human rights jurisprudence.’ Its role in the protection of human rights indicates;

1. The constitution placed the judiciary as the custodian of the Fundamental rights of the people;
2. The constitution made the judiciary independent to the legislature and executive;
3. By the power of judicial review, the judiciary can review any law passed by the Legislature or decision taken by the executive. It can declare null and void any laws passed by the legislature, if they are against the provisions of the constitution.
4. The Supreme of India has been assigned a major role of protector and custodian of fundamental rights by the Art.32.
5. The Supreme Court possess the power to writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto and certiorari* for the enforcement of any of the Fundamental Rights,
6. Under Art. 226 the High courts can also issue writs for the purpose of enforcement of Fundamental Rights.
7. A procedural expansion of action under the common law -known as Public Interest Litigation (PIL) is used in the Judiciary to protect the rights of the people. Recently, it has brought about a drastic change in the protection of human rights.

Thus, from the above it becomes obvious that the Indian constitution is a document rich in human rights. The constitutional framework, statutory provisions and more importantly the significant judicial decisions provided from time to time constitute the bedrock for the protection of human rights in India. In fact, the constitution itself is a comprehensive charter on human rights ever framed by any state in the world.

**Other unenumerated Fundamental Rights and the Covenant on Civil and Political Rights (1966):**

Following are some of the rights contained in the Covenant on Civil and Political Rights. These rights are available to the citizens of India through various judicial decisions, though they did not find mention in the constitution.

* Right to travel abroad; (Art. 21).
* Right to privacy (Arts. 21 and 19 (i) (d)).
* Right against solitary confinement (Art. 21).
* Right to human dignity (Arts. 21, 14 and 19).
* Right to free legal aid in a criminal trial (Arts 21, Art. 39-A).
* Right to Speedy Trial (Art. 21).
* Right against Handcuffing (Art. 21).
* Right against Delayed execution (Art. 21).
* Right against Custodial violence (Art. 21).
* Right against Public Hanging (Art. 21).
* Right to Health care or Doctor’s Assistance (Art. 21).
* Right to Shelter (Art. 21).
* Right to pollution free environment (Art. 21).
* Right to education of a child till he attains the age of 14 (Arts 21(A), 45 and 41).
* The Freedom of Press (Art. 19 (a)).
* Right to know (Art. 21).
* Right to compensation (Art. 21).
* Right to Release and Rehabilitation of Bonded Labor (Arts. 21, 23)
* Right of Inmates of Protection Homes (Arts. 21).

It is clear from the above discussion that under Indian constitution, besides the Fundamental Rights which have been enumerated under Part III of the Constitution, some other fundamental rights have been evolved by being connected with or having emanated from one or more of Fundamental Rights.

­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*\*\*