

Victims Human Rights In India: Constitutional References

Dr. Ravi Kumar Tyagi^{1*} Mr. Edgar Braganza²

¹ Assistant Professor Department of Law, OPJS University Churu, Rajasthan

² Research Scholar, OPJS University Churu, Rajasthan

Abstract – This statement of Jeremy Bentham shows the importance of laws in the process of realization of Human Rights. It leads towards the assumption that though the Human Rights can neither be created nor be amended but for their realization some form of legal machinery is required.

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INTRODUCTION

“Right is a Child of Law, From Real Laws Come Real Rights.”

In India, The Protection of Human Rights Act, 1993 defines “Human Rights” as, “Human Rights” means 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.”

Taking into consideration the pathetic condition of the crime victims, ascertainment of their human rights has become the need of the day. India is a frontrunner in advancing the cause of human rights but when it comes to human rights of victims of crime, the picture appears to be very bleak with victims.

INTERNATIONAL HUMAN RIGHTS NORMS IN INDIA:

Article 51 of the Indian Constitution imposes an obligation upon the State to promote respect for International law and treaty obligations.

Regarding treaty obligations, India has acceded to the International Covenant on Civil and Political Rights (ICCPR), 1966 on 10th April 1979. India has signed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 on 30th July 1980 and ratified it on 9th July 1993. India has acceded to the Convention on the Rights of the Child (CRC), 1989 on 11th December 1992. India has ratified the International Convention on Elimination of All Forms of Racial Discrimination (ICERD), 1965 on 3rd December 1968. India has signed the Convention against Torture and other Cruel, Inhuman or

Degrading Treatment or Punishment, 1984 on 14th October 1997.

Regarding India’s status in relation to ICCPR, it was observed by the Supreme Court in D.K. Basucas

India is a signatory to ICCPR, 1966. It has a binding effect on India because of its being a ratifying State. To give effect to the provisions of ICCPR, an ordinance was promulgated that resulted into the Protection of Human Rights Act, 1993 of late, the reference to International Covenants being made by Indian Judiciary can frequently be found in various judgments.

Though these cases primarily are related with the rights of persons in custody as suspects or accused.

VICTIMS’ HUMAN RIGHTS IN HUMAN RIGHTS ACT, 1993:

The Protection of Human Rights Act, 1993 (No. 10 of 1994) not only defines ‘human rights’ but prescribes for the constitution of Human Rights Commission, Human Rights Courts or the Special Courts and Special Investigation Teams to look in to the cases of alleged violation of human rights. The Human Rights Commission may give its recommendations or may take any other action as it may deem fit for the protection of human rights.

The Protection of Human Rights Act, 1993 (No. 10 of 1994) defines “Human Rights” as the rights that relate with life, liberty, equality and dignity of the individual as either guaranteed by the Constitution of India or the rights as embodied in the International Covenants that are enforceable in India.

As far as rights guaranteed by the Constitution of India are concerned, Part III of Constitution of India guarantees certain rights as fundamental rights and provides a protection mechanism for the same in case of their violation in the form of Article 32 and 226.

In case of international covenants, the Human Rights Act says that to find out rights embodied in International covenants, a reference has to be made to the International covenant on civil and political rights and the international covenant on economic, social and cultural rights as adopted by the general assembly of United Nations on 16th December 1966. Adding to this list the Protection of Human Rights (Amendment) Act, 2006 provides for insertion of any other covenant or convention that has been adopted by the General Assembly of the United Nations and has been specified by the central Government through notification.

The Human Rights Act provides that a victim can approach the Human Rights Commission or the Commission itself can take steps to inquire suo motu or it can inquire on the direction or order issued by any court in case there is a

- a) Violation of Human Rights or an abetment thereof, b) Or there is a negligence on part of a public servant to prevent such violation.

VICTIMS' RIGHT TO JUSTICE IN INDIA: CONSTITUTIONAL PROVISIONS:

Article 14

Of this part III of the Constitution of India provides for 'Equality before law'. This Article gives emphasis upon ensuring that all persons are accorded equal protection of laws.

Article 21 of the Constitution of India ensures protection of life and personal liberty to all. It says that no one shall be deprived of his life or personal liberty. The protection provided under this Article is available to non-citizens also.

1. VICTIMS' RIGHT TO PROTECTION:

Article 21 relates with the Human Rights of every person and thus has an equal Application for protection to an accused as well as the victim of a crime. To safeguard the human rights of every person is the duty of the State. It was emphasized by the Constitution Bench of Supreme Court that,

"The said Article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim in certain situations even a witness to the crime may seek for and shall be granted protection by the State."

Article 39-A directs the State to provide for such conditions that the operation of the Legal system promotes justice, on a basis of equal opportunity.

2. VICTIMS' RIGHT TO ACCESS TO JUSTICE:

Emphasizing the status of victim in *Sonalal soni v. State of Chhattisgarh* case, court referred to the victim friendly steps being taken by the legislature and judiciary in that direction,

3. VICTIMS' RIGHT TO FAIR INVESTIGATION:

Hon'ble Supreme Court has given wider interpretation to Article 21 by recognizing right to fair trial including right to fair investigation as part of right to life and liberty. Explaining the essentials of a fair trial Court made it clear that, "Prompt registration of a case by a competent police officer followed by swift investigation resulting in a quick final report are all concomitants of a fair trial. To be fair to the victim, fair to the accused and fair to the society at large are the constitutional obligations of the police. If there is any deviance, it is likely to result in failure of justice."

4. VICTIMS' RIGHT TO CONSTITUTIONAL REMEDIES

Article 226 entrusts the same power in every High Court in the Country to issue appropriate directions, orders or writs in case of violation of fundamental rights so as to ensure victim justice.

REPORTS AND RECOMMENDATIONS OF COMMITTEES AND COMMISSIONS FOR VICTIMS' RIGHT

Regarding the Constitutional mandate of ensuring right to life and liberty, Malimath Committee observed that,

Protection of life and liberty have been given a pre-eminent position in our Constitution by enacting Article 21 as a fundamental right and imposing a duty on the State to protect life and personal liberty of every citizen. Any deprivation or breach of this valuable right is not permissible unless the procedure prescribed by law for that purpose is just, fair and reasonable."

MALIMATH COMMITTEE REPORT:

Malimath Committee, after considering the issue of non-registration of complaints by police recommended for action against erring police officers. It was observed by the Committee that,

"According to the Section 154 of the Code of Criminal Procedure, the office in charge of a police station is mandated to register every information oral

or written relating to the commission of a cognizable offence.”

CONCLUSION:

Human Rights Act in India encompasses in the definition of human rights, the rights in relation to right to life and right to dignity as guaranteed by the Constitution of India or embodied in the International Covenants as enforceable by the courts in India. Courts in India are receptive to the changes occurring in International Human Rights Norms. Constitution of India through its preamble, fundamental rights and directive principles recognizes victims' right to protection, victims' right to access to justice and victims' right to fair investigation. Constitution provides protection to fundamental rights including right to life. Legislative measures though do not pose a clear picture and provide only a vague picture of human rights of victims of crime. Certain enactments as interpreted by the courts, have helped in developing the concept of human rights of victims of crime in India. Reports of various committees and commissions constituted in relation to criminal justice system in India also favour protection to victims. It is very unfortunate for victims of crime that despite such a favourable constitutional and legislative mechanism they are not able to receive their due treatment from the criminal justice system because of the State's failure in performing its positive obligations. These measures whether international or national provide no respite to victims' sufferings because of the fact that substantive laws without proper implementation are of no use. Victims of crime are in a poor state of affair despite there being, International and National Measure including- Constitutional, Legislative and Judicial.

REFERENCE

1. S. Krishnamurthy (1994). Human Rights and the Indian Police 27 (R. R. Publications, Bangalore, 1994).
2. S. K. Kapoor & Nagendra Singh (1998). International Law 335 (Central Law Agency, Allahabad).
3. As amended by the Protection of Human Rights (Amendment) Act, 2006- No. 43 of 2006.
4. Section 2 (1) (f) of The Protection of Human Rights Act, 1993 as amended by the Protection of Human Rights (Amendment) Act (Added by Act 43 of 2006);
5. D. K. Basu (2015). v. State of West Bengal and Others 2015 SCC Online SC 651.
6. Section 2 (1) (d) of The Protection of Human Rights Act, 1993 (No. 10 of 1994) as amended by the Protection of Human Rights (Amendment) Act, 2006- No. 43 of 2006.
7. “14. Equality before law. - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”
8. “21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.”
9. State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others (2010) 3 SCC 571 at para 68.
10. Sonalal Soni v. State of Chhattisgarh 2005 SCC on Line Chh 132.
11. P. Sathish Kumar v. State of Tamil Nadu 2014 SCC on Line Mad 347.

Corresponding Author

Dr. Ravi Kumar Tyagi*

Assistant Professor Department of Law, OPJS
 University Churu, Rajasthan