

Chapter 2

Current scenario of right to food, water, health, education and justice with respect to Indian context

Author: Kailas.S, Co-Author: Tom Wilfred¹⁰

Abstract

Human rights are a set of fundamental rights which are universally adopted by each country for providing a smooth and dignified life to their citizens. Human rights are inherent to all beings regardless of race, religion, sex, caste, ethnicity or any other status. Major struggle for an internationally acclaimed set of Human Rights began after the end of the Second World War and the events of Holocaust which led to the formation of the ‘*Universal Declaration of Human Rights*’ in 1984 by the United Nations. With the passing of time, liberalized thinking of the people gave more importance to the formation and implementation of the rights especially in India.

Our paper specifically deals with few of the basic and fundamental human rights provided by the government of India which include Right to food and water, Right to proper healthcare and Right to education. We also discuss the current scenarios of these rights with relevant statistics and how far does the implementation of various programs applicable to these rights go. Relevant case studies and recent court judgments will be included to impart a better insight into the present situation. Denial to Justice is a gross violation of human rights, hence in this paper there will be a section pertinent to the study on Access to Justice along with barriers and discrimination to Access to Justice faced by the citizens as well as immigrants in India,

Finally, to conclude the paper we develop an integral approach binding Corruption and Human Rights together. The need for such an integral approach is for two main reasons: first, if corruption affects human rights and if so, in what way; second, whether considering Right to Information as a human right will reduce the amount of corruption in the country.

10 Author: S Kailas

Class: BBA. LLB 3rd Year

University: Vellore Institute of Technology School of Law

Email: kannan.3280@gmail.com

Name of Co-author: Tom Wilfred

Class: BBA. LLB 3rd Year

University: Vellore Institute of Technology School of Law

Email: tomwilfred@gmail.com

Furthermore, some propositions shall be put forth for a finer enactment of these rights and relevant program in the country, so as to yield a better lifestyle for the citizens of India.

Introduction

Human rights are the rights available to all human beings irrespective of race, religion, sex, nationality, ethnicity or any other status. They mainly include the right to life and liberty, right to work and education, right to justice, freedom of opinion and expression etc. The universal human rights are expressed by law normally in forms of customary international law, general principles, treaties and several other sources. International human rights law obliges the Government to act or refrain from certain acts in order to protect and promote human rights and fundamental freedom of all human beings. Human rights in India is complicated compared to other nations because of the huge population, widespread property, high illiteracy rate and diverse culture. The Constitution of India provides seven fundamental rights to the citizens of India which are right to equality, right to freedom, freedom of religion, right against exploitation, right to constitutional remedies and cultural and educational rights.

Methodology

Main Theme - Scenario of right to Food, Water, Health, Education and Justice and developing an integral approach with corruption and human rights

Main points

Right to Food, Water, Health, Education and Justice

Barriers and discrimination in access to Justice

Corruption and the RTI act

This paper is solely based on secondary data. All the mentioned data was already published. There was proper analysis of all the statistics, schemes and Judgments mentioned in the paper. The method was found suitable for this article as the main topics discussed are formerly established contents, and surveys and statistics pertaining to the topic was recently conducted

- Major references
- Online library
- NHRC and UN databases
- Articles on Human Rights
- Books

Right to Food

Food is one of the main necessities of human beings and it is necessary for one's survival. The right simply does not mean the physical presence of food but the presence of safe and quality food which satisfies our dietary needs. Article 47 of the Indian Constitution states that it is the duty of the state to raise the level of nutrition and the standard of living and to improve public health. The right to food is not properly utilized in India and reports show that India has been ranked at 103rd position among the 119 countries in the Global Hunger Index.¹¹

In 2013 National food security act was passed and it provides subsidized food grains up to 75% and 50% of the rural and urban population respectively. India's Public distribution system is the world's largest food subsidy program. A big disadvantage of this system was that only BPL cardholders were allowed low cost food grains. Many of the poor families did not have BPL cards and they were not allowed any benefits in this scheme. India also has several other schemes for providing food such as the Integrated child development scheme which provides food benefits to all children under six years of age, pregnant women and lactating mothers, Mid-day meal scheme that entitles food to all students from primary and upper primary school and Annapurna scheme for the indigent senior citizens of 65 years or above who are not getting old age pension.

Starvation death is a huge problem faced by India. The Supreme Court stated that it is the duty of each state and union territory to prevent deaths due to malnutrition and starvation. The main case under right to food is PUCL vs. Union of India.¹² This case was one of the most important case which lead to the inclusion of right to food as a fundamental right under article 21 of the Indian Constitution.

India has a population of over 1.3 billion and is having a tremendous growth rate in population. According to Food and Agriculture organization, around 194.4 million people are undernourished in the country. This means that around 14.5% of the whole population of India is undernourished. According to The State of Food Security and Nutrition in the World, 2019 report, 51.4% of women in reproductive age are anaemic. The report also shows that 37.9% of the children who are below the age of 5 are stunted while 20.8% are suffering from wasting.¹³

¹¹Concern Worldwide and Welthungerhilfe, *Global Hunger Index, October 10, 2018*

¹²PUCL vs Union of India and Others, *Writ Petition (Civil) 196 of 2001*

¹³Food and Agriculture Organization of United Nations, *The State of Food Security and Nutrition in the World, 2019 report*

Right to water

Water is the essence of life. It is one of the basic necessities required for the survival of human beings. Denial of right to water means the denial of right to life. Even though right to water is not stated in the article 21 of the Indian constitution, it can be interpreted that right to life includes right to safe water. It is the duty of the state to provide safe and adequate water.

Continuous water supply is another major problem faced by the cities in India. In 2005 Indian cities with population above one million did not have continuous water supply for more than a few hours. This caused a huge struggle among the people. By 2010 two cities in India, Thiruvananthapuram and Kota started receiving continuous water supply.

One of the main problems faced in India is the depletion of groundwater. The groundwater is depleted approximately in the range of 122-199 billion metre cube. In two or three years the groundwater will be wholly depleted in a number of cities¹⁴ and the only source of water available will be through desalination of sea water. This water will not be as healthy and therefore will violate article 21 of the Indian constitution. The state not only has the duty to provide adequate drinking water but also has the duty to protect the water bodies from pollution and encroachment. In the case of *A.P Pollution Control Board II v. Prof. M.V Rayudu*,¹⁵ the Andhra Pradesh Government allowed a polluting industry to be set up near two main reservoirs of the state. An exemption was provided by the Government for the industry even though it polluted the water bodies. The Supreme Court ruled against the act of the Government and struck down the exemption provided to the industry. The Supreme Court held that the Environment Protection Act and Water (Prevention and Control of Pollution) Act 1974 did not enable to the state to grant exemption to a particular industry within the area prohibited for location of polluting industries.

Right to health and education

The right to health is one of the major fundamental rights of the citizens provided in the constitution in article 21 and the DPSP. We need an efficient right to health to have a transparent healthcare system in the country, to eradicate diseases, address health crisis and improve standard of living, list out problems and crimes in medical industry. Healthcare includes mortality, fertility, nutrition, immunization, morbidity, diseases and the government have to develop an effective framework to address these issues. In the Paschim

¹⁴ According to a report from NITI Aayog, 21 Indian Cities including Bengaluru, Chennai, Delhi and Hyderabad will run out of groundwater by 2020

¹⁵ *A.P. Pollution Control Board (I) v. Prof. M.V. Nayudu*, 1999(2) SCC 718, dated 27.1.1999

Bange ket Mazdoor Samity¹⁶ case the court held that it is the responsibility of the state to provide medical aid to all citizens by widening article 21. Indians spent 55-57% of money in health due to which 63 million people go behind the poverty line. India also has higher disease burden than other countries. The less than five years mortality rate in India stands at 51 per 1000 live births. There is not enough hospitals and medical employees, there is 1million of allopathic doctors for 1.3 billion populations. Among Medical employees in urban areas only 58% had degrees, whereas only 19% had in rural areas¹⁷. Almost 60 billion rupees has been allocated from the budget for healthcare. Some of the important schemes for medical reasons are Rastriya Bal Swasthya Karyakram, Reproductive, Maternal, Newborn, Child and Adolescent Health, National AIDS Control Organization, Pradhan Mantri Swasthya Suraksha Yojana, Rastriya Swasthya Bima Yojana.

Literacy in a country is one of the factors that determine the growth of a country, hence the government has given utmost importance to Right to Education. To promote this the RTE act has been formulated and the scope of article 15 has been widened. The current literacy rate of India is 74.04%. This growth has been the result of great legislations and schemes. The RTE act mandates that education should be mandatory and free.¹⁸ It also regulates the standard of institutions, faculties and facilities provided. Discrimination is also controlled to avoid gender disparities in education. Apart from the RTE act there several other initiatives called the Chhnuti 2018 policy, Meri Lado Kare Padhai, the Vidyalakshmi scheme etc. even after all these implementations there still exist gender disparities in literacy rate, child labor, and illiteracy prevalent in many states. There is a gross enrolment ratio in India where rural illiterate people are unwilling to send their children to school, but rather prefer them to do jobs. According to the RTE act the private schools should reserve 25% of the seats to economically backward students which will be reimbursed by the government,¹⁹ but most of the prestigious schools in the nation are reluctant to do this because of the multi-level corruption present in the government departments as well as among the officials. Due to the mandatory no-detention rule students somehow reach 8th grade and after this they are reluctant to continue their studies. This section requires proper amendments. Many girl children in the rural areas still do not have basic education as parents are unwilling to spent money on education for their female children. This gender bifurcation is visible in many villages in India. Since education is a matter which should not be taken lightly the constitution and the government of India must make stronger provision and schemes to improve the overall condition of the Right to education.

¹⁶ *Paschim Banga Khet Mazdoor Samity & Ors v State of West Bengal & Anor (1996) AIR SC 2426/ (1996) 4 SCC 37*

¹⁷ *Dr. Ankuran Dutta, Dept of Communication and Journalism, Gauhati University*

¹⁸ *Section 8, Right to Education Act 2009*

¹⁹ *Section 12(c), Right to Education Act 2009*

Right to Justice

Right to justice is one of the important and inalienable right provided to the citizens of a country, and India too has its own array of laws and articles which ensures that all respected citizens of the country has access to equal justice and none is prejudiced based on any conditions. The constitution of India provides certain articles like Article 14[2] which ensures equality before the law and equal protection from the law and article 39[A] mandates the state to provide access to justice for everyone irrespective of the prevalent inequalities present. The phrase ‘Access to justice mainly is based on two ideologies

- The prevalent system must provide access to all
- It should be fast, fair and viable.

However, due to the severe dysfunctionalities and deceit present in the judicial system, the ordinary citizens have the right to Justice violated on several occasions. The intense resistance to change, inability to deliver swift and viable justice to its citizens poses a huge risk and threat to the law and protection of the fundamental rights.

Barriers to Justice

Regressive laws and violations by the police

India is one of the countries which still hold onto the colonial era laws like *the Police Act 1861* and the *Prisons Act 1894*, even though amendments have been made to these laws, it still is not based on the latest democratic framework and constitution of India. There is no efficient and enforceable replacements for this colonial era laws.

The Police force is constantly connected with custodial torture, death, rape, corruption and ignorance of facts. Procedural codes are violated from time to time and this results in the society vulnerable to police brutality and corruption. The police force in a state is governed by the *Police Act 1861*, but after the judgment of the Prakash Singh²⁰ case the court has ordered the state and UTs to form their own laws to regulate the police force modelled on the *Police Act 1861*. But alarmingly the state laws formed have been found to be more regressive than the *Police Act*. States have sanctioned statutes which support the ill actions of the police. States tend to enhance the power enjoyed by the executive over the police, thus plaguing the ill furthermore. Respective state legislations enhance police power without any restrictions and have diluted the supervision on them. Growing powers of the police force has led to an increase in the custodial torture of the accused and the witnesses, which in turn hamper the passing down of proper justice to the grieving party. From the year 2015 the number of people affected by custodial torture has been more than 750 and

²⁰ Prakash Singh & Ors vs Union Of India And Ors, writ petition 310 of 1996, 22 September, 2006

the number of deaths in judicial custody has, alarmingly over 4500. Thus, this reformative policy is turning out to be downtrodden and ineffective in serving Justice.

Judicial Delays and Inadequacy of legal Aid

The high pendency rate of cases has made huge negative impact on the judicial system and the economy of the country. One of the biggest obstacles for the investment cycle and economic growth in the country is the slow settlement of economic cases in the country. This lead the way for improper dispute resolution, contract enforceability which in turn demotes investment and growth. In a recent survey it was revealed that West Bengal, Odisha and Bihar more than 50% of the cases in the lower courts are pending for more than 3 years and almost all the High Courts have a pendency rate of more than 36%, but comparatively western states have lesser pendency rates than eastern states.²¹ Such high rates might be because high courts nowadays are welcoming writ petitions more than ever. Also, there is a huge vacancy of judges in our courts. There is a vacancy rate of 37% in high courts and 25% in lower courts.

Legal aid is provided to the citizens under Article 39[A], order XXXIII rule 18 of CPC and the legal Services Authorities Act. But according to Manisha Tuple²² a lawyer in Mumbai “Legal aid work is almost neglected on the ground and there is simple no judicial and political will to implement it”. Illiterate people are pushed to pay and people are made to run between offices for months for a lawyer. The offices are plagued with corruption which makes the lives of the citizens tough.

Prison

Prisons should be core of reformation in a country, but it has been the exact opposite in India. Indian prisons do not meet the standard given by the International Covenant on Civil and Political Rights, 1966, the UN Standard Minimum Rules for the Treatment of Prisoners, 1955, and the UN Directive on Basic Principles for the Treatment of Prisoners, 1990. Overcrowding, inadequate resources and improper monitoring all account to these issues. Prisons were severely overcrowded with an occupancy rate of 114%. Among these 67% of them are undertrial prisoners who suffer because of the lack of swiftness in providing justice. Indian jails are also highly underemployed when it comes to medical professionals in jails. Indian jails were 38% short of medical staff. Another important unjustifiable situation in India is the children of prisoners.²³ By the end of 2015 UP, West Bengal, MP, Bihar and Jharkhand had the highest number of children living with their mothers in prison. “Women prisoners with children have very little say in how they are

²¹ liveMint, *India's next generation reform must begin in courts*, 18 June 2019,

<https://www.livemint.com/news/india/india-s-next-generation-reforms-must-begin-in-courts-1560838699823.html>

²² She is a prominent lawyer working in Mumbai who deals with pro bono cases privately through NGOs.

²³ A study called *Every Life Matters* conducted by NDTV in 2015 highlighted the issue of children growing up with their mothers in prisons and their condition.

treated,”²⁴ The issue here is far bigger as these grow up in a condition which deteriorates their character and change them into future delinquents.

Discrimination in Access to Justice

Even though there is plethora of laws and articles which ensures equal access to justice for everyone, there still remains the huge area of discrimination shown towards various diverse sections of the society. This article particularly focuses on the discrimination suffered by women, refugees, LGBT community.

Women

Women have to deal with problems with problems from the family to the workplace. 29% of all the women face violence from their intimate or sexual partners. With many amendments and safeguards rape still accounts for 10% for all reported violence against women. Even girls below the age of 18 are subjected to sexual violence. Human trafficking and forces prostitution have also climbed over the 2500 mark in 2015.²⁵ Reporting sexual violence is an important task in access to justice, and many women in India still lacks the courage to do so or the officials re not acknowledging their reports. Officers are not sensitive to the unique barriers that women face in reporting sexual violence which makes interaction difficult. Often family members are not supportive of their decisions. The lack female officers also strengthen this issue. There are situations when women with disabilities find it difficult to communicate with the officers. Also, many police officers are not trained to deal victims coming under the POCSO act. Medical examination can be valuable for women in obtaining the right justice and delay in this will reduce the chance. Navigating the judicial process is one tough step for women especially women who are illiterate or belong to the SCs or STs. Proper legal aid is not provided to them.

Refugees

India has a very influx of refugees, which makes it an ideal destination for refugees from the neighboring countries to come to. There are refugees staying all over the country. The current status as of now is that there are 120,000 refugees remaining in India.²⁶ Even though these refugees do not have the same fundamental rights as the citizens of India, they should not be violated of the basic necessities and the basic human rights. These are people who came for a safe asylum in our country and most of the time our own citizens treat them with disregard. India does not have any laws regarding refugees and they have not signed the 1951 refugee convention. These disparities in laws make it difficult for them to file a case or go for judicial remedies

²⁴ Quoted by Sukanya Shantha, a researcher in Amnesty International in May 2016.

²⁵ Global database on violence against Women, Statistics of the National Commission for Women on violence against Women, United Nations.

²⁶ This number includes Tibetans, Bangladeshi and Afghan refugees, Sri Lankan Tamils, Rohingyas all over India

LGBTQ

Even after reformation of article 377 the LGBTQ community still faces discrimination in access to Justice. They are mocked or harassed by the officers in charge, their issues are not given proper importance by the authorities. Human rights violations associated with housing included discrimination in accessing rental accommodation, harassment and violence by landlords and by families, anti-beggary laws²⁷ and arbitrary evictions. There is no proper representation for them to address their issues in the public forum. The Indian government has not consistently met its constitutional and international obligations to guarantee the rights of LGBTQ persons. There is no single law or policy solution to ending long-standing and systemic discrimination.

Corruption and Human Rights

There are two questions relevant in this context;

If corruption affects human rights

If so, in what way?

Corruption affects human rights as it is an abuse of power and breach of trust. There is similarity in upholding human Rights and abolishing corruption. A government which lacks transparency is full of deceit is bound to be unfaithful to its citizens in fulfilling the Human rights. Corruption also forms a hindrance in getting issues resolved to the citizens relating to fundamental rights. A barrier of discrimination is also formed when corruption takes place, certain communities have their rights taken away and is left to struggle for their rights. Abuse of power causes ill treatment of the people and forms partiality between the poor and the rich in matters human rights. Day to day news-paper articles talk about how the minorities, poor and rural people struggle to obtain food, water, justice. Corruption takes away half of these privileges from the weaker section.

One of the major ways through which corruption can be tackled in India is the active and effective implementation of Right to Information Act 2005. Arena Roy, a social activist said, "India 's RTI Act as the most fundamental law this country has seen as it can be used from the local Panchayat to parliament from a non-descript village to posh Delhi, from a ration shop to the 2G Scam"

The RTI promotes transparency and accountability to the authorities

It gives the citizens a right to access information under the control of public authorities

Decision making process

Involves the citizens more into the actions and schemes of the government

27 Article 21 provides constitutional safeguard against beggary. There is section 363A in IPC against beggary by minors. Apart from these there are also state legislation against beggary

Helps to find out disparities in implementation
Helps to know the efficiency of the government
Escalate awareness about the government programs
Ensures strengthening of government-public relation

Conclusion

Hence, we conclude that the RTI act can help in reducing the corruption in the country which can ensure better implementation of the schemes relevant to the human rights of a citizen. Also, people must push their elected representatives to show better accountability towards the citizens. The parliament must introduce efficient anti-corruption laws and better schemes that will help the citizens get access to amenities like food, water, health, education and justice, thus improving their overall lifestyle.