



"THE INDIAN CONSTITUENT ASSEMBLY AND UNITED NATION DECLARATION HUMAN RIGHT"

Law

**DR.SARANG
D.DAVE**

B.COM.,LL.M. PH.D

ABSTRACT

History of Indian constitution assembly decide a we give a fundamental right a citizen of India that's reason India are not signature in united nation declaration of human right ace 1948.india are statute a fundamental right in Indian constitution part-3 in this paper we comparative study about Indian constitutional assembly and united nation declaration of human right law.

KEYWORDS:

History of Indian constitution assembly- History of human right law- Comparative study about Indian constitution fundamental right and human right

1.History of Indian constitution assembly

Constitution of India was drafted by the Constituent Assembly of India. It was originally elected before Independence for the United India. It met first on the 9th of December 1946. It worked for two years eleven months and eighteen days, before it adopted the Constitution. The Constituent Assembly had held eleven sessions. First six Sessions were spent in passing the Objectives Resolution, and Consideration of the Reports of various Committees including the one on Fundamental Rights. The seventh to eleventh sessions debated the Draft Constitution.

After Partition of the Country, on 15th August 1947, the Members elected to the Constituent Assembly from Areas that remained with Indian Union, continued with the work of framing Free India's Constitution. All those elected from the areas that fell into the newly created Pakistan went to Pakistan, or resigned. Baba Saheb Dr BR Ambedkar, elected in a by-election from the constituency vacated by Mandal, lost his Membership of the Constituent Assembly, as that fell into East-Pakistan, the present day Bangladesh. He was thankfully re-elected to the Constituent Assembly from the seat vacated for him by Jayakar. Baba Saheb was also elected to the Drafting Committee of the Constitution, and ultimately became the Chairman of the Drafting Committee. As Chairman, he moved the Draft Constitution, defended or redrafted every provision of the Constitution. **The Constitution finally was moved by Baba Saheb, for adoption on 25th November 1949. And the Constitution was approved on 26th November 1949.** Every year, Supreme Court of India and the legal fraternity celebrate 26th of November as Law Day. The Constitution of India formally came into effect on 26th Jan 1950. That day, free India became **Sovereign Democratic Republic**, and every year we remember and gratefully celebrate the day as the **Republic Day of India**. And after Constituent (Forty-second Amendment) Act passed by Parliament, the Nation is said to be a **Sovereign Socialist Secular Democratic Republic**.

The Drafting Committee was elected on 29th August 1947, and met first on 30th August 1947. It met for 141 days to prepare the Draft Constitution. The Draft by the Constitutional Adviser had 243 Articles and 13 Schedules. The drafting Committee worked on it and presented to the Constituent Assembly the Draft Constitution with 315 Articles and 8 Schedules. At the end of Consideration of the Draft Constitution by the Constituent Assembly, the Articles were 386. In its final form, it was 395 Articles and 8 Schedules. Amendments tabled by Members were about 7,635. Of those the ones actually moved were 2,473.

In comparison, the American Convention met on 25th May 1787, and completed the Constitution with only seven Articles and 21 sections in the first four, within four months, on 17th Sept 1787. The Constitutional Convention of Canada met on 10th October 1884, and finished its task in two years and five months, with 147 Articles, by March 1867. The Australian Constitutional Convention assembled in March 1891 and finished its work on 9th July 1900, with 128 Articles after a period of nine years. All of them completed their work without considering any amendments.

We must always remember that **Constitution is the basic Law of the**

Country. It provides the rights, defines the duties, and delineates the responsibilities of every authority, official, institution and individual, living in the Country and governed by the Constitution. **All Authorities and Institutions derive their existence and power from the Constitution. Hence every one of them have to work and function within the ambit of the Constitution. All others, have to exist and operate, within the limits and boundaries of the Constitution**

The Preamble of the Constitution is more significant. For, the Preamble reflects the sole of any Constitution. It embodies the ideals and aspirations of the People who made the Constitution, adopted and accepted it for their governance and future. It is part of the Constitution, and can be amended like any other provision in the Constitution, as long as that does not affect the basic character, principles and spirit of the Constitution. All Laws, practices and procedures proceeding and that existed before the Constitution are repealed if they are in contradiction and are violative of any provisions of the Constitution.

2.History of human right law

The modern sense of human rights can be traced to Renaissance Europe and the Protestant Reformation, alongside the disappearance of the feudal authoritarianism and religious conservatives that dominated the Middle Ages. Human rights were defined as a result of European scholars attempting to form a "secularized version of Judeo-Christian ethics". Although ideas of rights and liberty have existed in some form for much of human history, they do not resemble the modern conception of human rights. According to Jack Donnelly, in the ancient world, "traditional societies typically have had elaborate systems of duties... conceptions of justice, political legitimacy, and human flourishing that sought to realize human dignity, flourishing, or well-being entirely independent of human rights. These institutions and practices are alternative to, rather than different formulations of, human rights". The most commonly held view is that concept of human rights evolved in the West, and that while earlier cultures had important ethical concepts, they generally lacked a concept of human rights. For example, McIntyre argues there is no word for "right" in any language before 1400. Medieval charters of liberty such as the English Magna Carta were not charters of human rights, let alone general charters of rights: they instead constituted a form of limited political and legal agreement to address specific political circumstances, in the case of Magna Carta later being mythologized in the course of early modern debates about rights. One of the oldest records of human rights is the statute of Kalisz (1264), giving privileges to the Jewish minority in the -Kingdom of Poland such as protection from discrimination and hate speech. The basis of most modern legal interpretations of human rights can be traced back to recent European history. The Twelve Articles (1525) are considered to be the first record of human rights in Europe. They were part of the peasants' demands raised towards the Swabian League in the German Peasants' War in Germany. In Spain in 1542 Bartolomé de Las Casas argued against Juan Ginés de Sepúlveda in the famous Valladolid debate, Sepúlveda maintained an Aristotelian view of humanity as divided into classes of different worth, while Las Casas argued in favor of equal rights to freedom of slavery for all humans regardless of race or religion. In Britain in 1683, the English Bill of Rights (or "An Act Declaring the Rights and Liberties of the Subject

and Settling the Succession of the Crown") and the Scottish Claim of Right each made illegal a range of oppressive governmental actions. Two major revolutions occurred during the 18th century, in the United States (1776) and in France (1789), leading to the adoption of the United States Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen respectively, both of which established certain legal rights. Additionally, the Virginia Declaration of Rights of 1776 encoded into law a number of fundamental civil rights and civil freedoms.

3. The constitution assembly drafting a fundamental right

The Fundamental Rights are considered as one of the integral part of Indian Constitution. The Fundamental Rights are defined as the basic human freedoms which every individual has a right to enjoy for a proper and harmonious development of personality. Although many rights are considered as human rights a specific legal test is used by courts to determine the limitations which can be imposed on them. These rights find their origin in many places such as England Bill of Rights, United States Bill of Rights and France Declaration of Bill of Rights of Man.

The framing of Indian Constitution can be best known by browsing transcripts of Constituent Assembly debate. The Constituent Assembly was composed of members elected from various British Indian Provinces and nominated by the princely states.

The framers if Indian Constitution had three things in mind – ensuring unity, democracy and creating social revolution. The Constitution of India took nearly three years in its formation and finally came into force on 26th January 1950.

The biggest challenge before the Constituent Assembly was to evolve a document that would address the diversity amongst the population, create accountable governance and an independent republic. The development of fundamental human rights in India was due to exposure of students to the ideas of democracy, working of parliamentary democracy and British political parties and was also inspired by the:-

- England Bill of Rights
- Us Bill of Rights
- France Declaration of the Rights of Man and
- Development of Irish Constitution.

The committee conceded that there were some legal principles which could approximately be incorporated in the new constitution. Accordingly sections 295, 297-300 of Government of India Act 1935 conferred certain rights and forms of protection on British subjects in India.

By the Objective Resolution adopted on January 22, 1947 the constituent assembly solemnly pledged itself to draw up for future governance a constitution wherein "shall be guaranteed and secure to all the people of India justice, social, economical and political, equality of status, of opportunity and before the law : freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality" and wherein adequate safeguards would be provided for minorities, backward and tribal areas and depressed and other classes. Two days after the adoption of the resolution the assembly elected Advisory Committee for reporting on minorities fundamental rights and on the tribal and excluded areas. The advisory committee in turn constituted on Feb 27, 1947 five sub-committees which would deal with fundamental rights.

The sub committee on Fundamental Rights at its first meeting on February 27, 1942 had before it proposal of B.N.Rau to divide Fundamental Rights into two classes i.e. justifiable and non justifiable.

An important question that faced the sub committee was that of distributing such rights between the Provincial, the Group and the Union Constitution. In the early stages of its deliberation the sub committee proceeded on the assumption of this distribution and adopted certain rights as having reference only to union and certain rights as having reference both to the union and to the constitutional units. However later it was felt that if Fundamental Rights differed from group to group and from unit to unit or were for that reason not uniformly enforceable, it was felt the Fundamental Rights of citizens of the union had no value. This reorganization leads to the realization

that certain Fundamental Rights must be guaranteed to every resident. The sub committee recommended that all the rights incorporated must be binding upon all the authorities whether of the union or of the units. This was thought to be achieved by providing definition in the first clause. The expression the state included the legislature, the government of the union and the units of all local or other authorities within the territories of the union that the law of union included any law made by the union legislature and any existing Indian law as in force within the union or any part thereof.

The sub committee fully discussed various drafts submitted by its members and others before formulating the list of Fundamental Rights. Dr. Ambedkar pointed out that the rights incorporated in the draft were borrowed from constitution of various countries where the conditions are more or less analogous to those existing in India.

4. United nation declared a human right law 1948

The underlying structure of the Universal Declaration was introduced in its second draft which was prepared by René Cassin. Cassin worked from a first draft prepared by John Peters Humphrey. The structure was influenced by the Code Napoleon, including a preamble and introductory general principles. Cassin compared the Declaration to the portico of a Greek temple, with a foundation, steps, four columns and a pediment. Articles 1 and 2 are the foundation blocks, with their principles of dignity, liberty, equality and brotherhood. The seven paragraphs of the preamble, setting out the reasons for the Declaration, represent the steps. The main body of the Declaration forms the four columns. The first column (articles 3–11) constitutes rights of the individual, such as the right to life and the prohibition of slavery. The second column (articles 12–17) constitutes the rights of the individual in civil and political society. The third column (articles 18–21) is concerned with spiritual, public and political freedoms such as freedom of religion and freedom of association. The fourth column (articles 22–27) sets out social, economic and cultural rights. In Cassin's model, the last three articles of the Declaration provide the pediment which binds the structure together. These articles are concerned with the duty of the individual to society and the prohibition of use of rights in contravention of the purposes of the United Nations

5. Comparative study about Indian constitution fundamental right and human right

Before we attempt to show as what specific Fundamental Rights under the Indian Constitution contain the substance and values inherent in Human Rights as such, let us be clear about the term 'Human Rights' itself. The basic Value which underlies Human Rights is that human beings, born in any part of the world, are equal in dignity and rights. Human Rights are the moral claims of these persons, irrespective of their race, class, sex or nationality, moral claims which are inalienable and inherent in all human individual by virtue of their humanity alone. This is to say that Human Rights are rights which all persons hold by virtue of the human condition. Such rights do not depend upon grant or permission of any State Government they are natural to the human person. When these inherent moral claims of human beings are articulated and formulated, as done by the UN, are termed as Universal Human Rights. Likewise, when such moral claims of human persons are codified by a state according to the law-creating processes of a society and granted to its citizens, they are known as Fundamental Rights or legal rights of the citizens. However, the basic of these legal rights, in the ultimate sense, is inherent naturalness of them, and also the consent of the governed, that is the consent of those who are the subjects of the rights.

When the founding fathers of Indian Constitution were drafting the corpus of Fundamental Rights for the people of India they did have their eyes on various historical experiences like India's struggle for freedom from the alien British rulers, and on documents related to rights like the Magna Carta, French revolutionary principles of Liberty, Equality and Fraternity, the American Bill of Rights and the Petition of Rights. This was also the time when the UN Commission on Human Rights, established in 1945, was engaged in drafting a Charter defining Human Rights and Indian Constitution makers took note of such Human Rights which were on the anvil of the Human Rights Commission. Substance of such historical events and experiences, coupled with our national requirements like linguistic, regional diversities and components of our social structure influenced the architects of the Indian Constitution and they tried to incorporate the inherent values of many a Human Right under the generic title Fundamental Rights. Justiciable and Non-justiciable

Rights Before we search for commonalities between 'Human Rights' as contained in the UDHR and the two Covenants and the Fundamental Rights under Indian Constitution, a word may be added here about the nature of both of them. Both the covenants, the ICCPR and the ICESCR, as we know, are legally binding treaties for such States which are parties to them. But the nature of rights in India is a little different. In the case of India, a distinction has been made between Fundamental Rights as contained in part III of the constitution and other social-economic rights as contained in Part IV under the title. Directive Principles of State Policy. While the Fundamental Rights under Part III like the right to life, liberty and equality are "justiciable", the rights enunciated in Part IV. Directive Principles of State Policy are "non-justiciable". Such rights are : right to employment, education right to adequate means of livelihood etc. On the whole, right to Equality, Right to Freedom, Right to Life and Personal Liberty, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights and Right to Property are "justiciable" in the sense that the Court shall take cognizance of such Fundamental Rights of an individual who approaches the court on case of violation of his Right. But not so in case of rights under the Directive Principles are "fundamental in the governance of the country and it shall be the duty of the State to apply these, principles in making of laws", such rights are non justiciable' in the sense that the courts in India have no power to enforce such rights. But let us be very clear about the line drawn between justifiability of the under Directive Principles of State Policy. The act of setting apart the sixteen articles under Directive Principles of Part IV which assign social-economic and other Rights as "non-justiciable" is not intended to deprive the citizen of his rights; there is also no sign to make the Indian State "autocratic" or despotic vis-a-vis the citizen. This only speaks about the financial inabilities of the Indian, Government in the years when the Constitution came into force. India did not have such financial resources as to put into practice rights like providing adequate means of livelihood to every citizen of India (Article 39) or, to provide free and compulsory education to all children up to the age of 14 years (Article 45). Human Rights in the Indian Constitution : When we look closely at the content or substance of civil and political rights and personal freedom granted to the citizen in the India, it becomes manifest that though the Fundamental Rights have not been christened as "Human Rights", most of such rights find a place under the title "Fundamental Rights" in the Indian Constitution. A comparative study of this is provided here under the heading, the Indian case and Universal Declaration of Human Rights.

6. Conclusion

The Indian constitution assembly are not excepted a human right law because Indian constitution assembly's fundamental right committee are also draft in our constitution fundamental right and this right are also similar to a united nation declaration of human right law in India are accept a this law in 1993 our assembly are create a basic right in Indian constitution fundamental right part III articles 14 to 32 and UDHR articles 1 to 22 are similar right given a people. The constitution assembly give a such right in India.

1. **dalitindia, October 5, 2004**
2. **From Wikipedia, the free encyclopedia**
3. **Mrinalini Singh, 4th year, NLIU Bhopal**
4. **Universal Declaration of Human Rights**

REFERENCE

1. <http://www.dalitindia.com/misc/IndConst.htm>
2. http://en.wikipedia.org/wiki/Human_rights
3. http://en.wikipedia.org/wiki/Universal_Declaration_of_Human_Rights
4. <http://legal-articles.deysot.com/constitutional-law/history-of-introduction-of-fundamental-rights-in-indian-constitution.html>
5. http://mha.nic.in/pdfs/Prisons_act1894.pdf
6. <http://indiankanon.org/doc/1937144/>