

## **BOOK REVIEW**

JAI. S. SINGH, V.P. UPADHAYA, *Expanding Horizons of Human Rights under the Constitution of India*, Ashoka Law House (2017).

The subject of human rights today depicts the complexities pertaining to the vulnerabilities of human beings while they are in engagement with new ideas, technological advancements or the exercise of regulatory power of the State. The struggle for human rights and their recognition/protection across the world reflects upon the potency they carry for establishing a just and fair governance paradigm. In the case of India, the Constitutional text/interpretations, and the statutory enactments determine the broad contours of the human rights and duties that govern the lives of people in the social, economic, cultural and political sphere. This book titled *Expanding Horizons of Human Rights under the Constitution of India* is aiming to capture the idea of human rights and the related developments in India under the Constitution of India.

The book is divided into nine parts comprising of 109 chapters. Part I of the book covers a whole range of topics under the heading of human rights and Part II is a compilation of relevant documents (international and national). The book does serve a purpose at several places, but not so in many others. The views herein are only suggestive focussing on specific parts of the book as follows.

### **Part I**

#### ***Title***

First and foremost, the title of the book on the cover is “*Expanding Dimensions of Human Rights under the Constitution of India*” and on page vii it gets a new name as the “*Expanding Horizons of Fundamental Rights/Human Rights under the Constitution of India*”. In addition to the change in name it can also be posed as to why both the expressions human rights and fundamental rights are clubbed. Is it that the authors want to treat them as being conceptually the same? The authors have made this query even more relevant by highlighting it and yet not addressing it.

#### ***Concept***

Under Part I, chapters 1 to 31 deal with the general principles of fundamental rights/human rights. The concept of fundamental rights/human rights according to the authors comes from the idea of natural rights and the natural law tradition. References to give meaning to the concept are also made to the United Nations Charter, the International Covenant on Civil and Political Rights, International Covenant on Economic, Social, and Political Rights, Universal Declaration of Human Rights, the first and second international conference on human rights, the Vienna Declaration

and Programme of Action, and the Protection of Human Rights Act in India. Further reference is made to the judicial decisions of the Apex court in India, and the position of rights mentioned in the constitution. While classifying the human rights under the three generations, the authors have identified the broad contours of the different human rights as civil, political, social, economic, and cultural.

The definitions quoted in the chapter are from other/different authors/sources that reflect diverse ideological frames and conditions. The chapter could have highlighted this diversity while using the expressions like “pursuit of happiness”, “basic rights”, “and fundamental freedoms”, “spiritual and other needs”. The same would establish a more robust understanding of human rights. The section on importance of human rights quotes definitions of human rights, and does not give a concrete reflection of what human rights do or provide for or cater to. The importance of human rights could very well have been seen as linked to conditions of equality, access etc. The role of the state, international community, role of courts, society etc. could have been more emphasised herein which is otherwise covered in different parts of the book.

### ***The Indian Constitution***

Chapter 6 on Fundamental Rights/Human Rights in India highlights the historical role of concepts like dharma and danda that shaped and influenced enforcement of sacred law and customary laws (rights and claims). The chapter divides Indian history into three parts; the historic, medieval, and British India. A reference to Vasistha, Gautama, Manu, Asoka, Mahabharata, Vamanapurana is made to emphasise upon the values of truthfulness, compassion, purity etc. Likewise for the other timelines and the factors that influenced the making of the Indian Constitution.

Chapter 8 makes a simple reference to the Preamble and its inclusion of the basic ideals of the Constitution. Followed by the provisions of Part III and as also found other international human rights instruments under chapter nine. Chapter ten dealing with Directive Principles of State Policy could have emphasised further on the concept of enforceability. Aspects such as role of welfare state, social-economic rights, distributive justice, standard of living etc. which deeply influence the interpretation of rights covered under different chapters could have been dealt in herein.

Chapter 11 on Human Rights and Fundamental Duties is inadequate in content. It does not establish the relationship between the fundamental duties and human rights or even the importance of Part IVA. Fundamental duties although separately find mention under separate headings such as environmental jurisprudence etc.

Chapter 12 on International Covenants and the Indian Constitution provides an introduction on the implementation of the International Covenants, but focuses only on the ICCPR and its relation with Part III of the Constitution. The inclusion of the

International Covenant on Economic, Social, and Cultural Rights (ICESCR) ideally would have covered the entire scheme of human rights and given support to the other chapters in the book dealing with specific rights. The ICESCR has immensely contributed to the understanding of human rights mentioned therein and in relation to concepts such as enforceability, minimum core obligations etc.

### *Specific rights*

Subsequent chapters deal with several specific rights under chapters 15, 16, 17, 18, 19, 20 etc. These constitute the heart of the book. The chapters cover the fundamental rights interpreted by the courts under Part III, as well as the legislative instruments that cater to the scheme of rights. Social and economic rights also find mention under chapters 21, 22, 23 etc.

Right to Privacy as covered under chapter 15 elaborates upon the expansion of the right beyond the realm of body/ physical spaces and further accommodating dimensions of freedom. It includes the right to travel abroad and the great transformation in the judicial approach which took place towards the interpretation of Article 21 and personal liberty particularly. The other set of rights that follow include the right against physical and mental torture inclusive of prisoner's rights and related reforms, the right against illegal arrest and custodial violence. Included further, the right to speedy trial and the related interpretations of delayed trial, delayed investigation and the impact it has on the attainment of justice.

Chapter 19 covers the right to legal aid and the constitutional obligation of the State in this regard. The subsequent chapters cover the topic of compensatory jurisprudence as evolved by the courts while interpreting the provisions of the Constitution. The right to education in context of Part IV, Part III, and the legislative framework finds specific mention under chapter 21. The socio-economic rights further like the right to shelter and the right to health as identified under international human rights framework, and as interpreted under the Constitution under Part III and Part IV are highlighted under chapters 22 and 23.

### *Evolving Jurisprudence*

This section of the book captures the evolutionary nature of several human rights issues in India including gender, environment, and status of refugees. On the more recent developments, chapter 24 dives into the approach of the courts towards rights posited in relation to sexual orientation and gender identity. It also makes a reference to civil and political rights indicative of democratic reforms such as the right to know criminal antecedents of candidates to membership of parliament and legislative assemblies. Also, the right to reputation as covered under Article 21.

Environmental jurisprudence finds mention in chapters 25, 26, 27 covering environment as a part of the right to life. Topics like noise pollution, coastal ecology and marine environment also find mention in context of several global commitments of the Indian state, and the judicial/ statutory initiatives taken in this regard. Gender jurisprudence under chapter 28 and 29 caters to the topics of sexual harassment at workplace and dowry death. The status of refugees is covered under chapter 31 reflecting on the overall scheme of international and local instruments that promote and cater to the identity and rights of refugees. Chapter 30 covers the 74<sup>th</sup> Amendment Act, 1992 pertaining to local governance.

### ***Part II to IX***

The verbatim text of international and national instruments under Part II from pages 497-1121 does not support the overall objective/theme of the book. The more recent legislative initiatives in this regard would have done the work.

### ***Concluding Remarks***

The footnote reference style adopted is misleading for the reader. Each page containing footnotes begins with footnote numbered as 1. In that case, the use of *ibid* in footnote 1 on any page is futile.<sup>1</sup>

For the sake of being useful to the students of human rights, the content of the book could have suitably been limited to only Part I of the book with the sub-headings; concept of human rights, provisions under the Constitution of India, new rights and new interpretations, and the effect of international human rights on the Indian Constitution.

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1 See pg. 234, 235, 236, 239, 357, 369, 370, 398, 401, 408, 415, 416, 447, 462, 463, 476.