



Government of Tamilnadu

Department of Employment and Training

Course : TNPSC Group I Mains Material
Subject : Social Issues in India and Tamil Nadu
Topic : Human Rights issues

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HUMAN RIGHTS ISSUES

Human Rights issues:

Rights are those conditions of social life, without which man cannot be at his best. Human Rights are the rights inherent to all Human beings.

Challenges of Human rights

Social Challenges:

- Bonded labour – child labour, Untouchability, Female infanticide, Domestic violence, LGBT rights
- Sexual harassment at workplace, Child marriage Exploitation of women (e.g. Prostitution)
- Atrocities on Dalits, and tribal people, Rights of Persons with Disabilities.

Religions:

Communal Violence, Caste Violence, Honour killing

Economic Challenges:

- Poverty, Unemployment, Drug addition, Consumer rights violation, Political challenges, Custodial Death/ Assault, Fake encounters (extra judicial killings), Political violence, Universal declaration on Human Rights 1948
- Human Rights can be defined as, the rights relating to life, liberty, equality and dignity of the individual.
- The United Nations Organization was established on 24th October 1945.
- One of its main objectives was to protect and respect the Human Rights.
- It drafted the International bill on Human Rights. It was adopted by the United Nations General Assembly on 10th December 1948. It is known as the Universal Declaration of Human Rights.

National Human Rights Provisions

- India “Home of Human Rights” in the form of tolerance and acceptance since Vedic Period.

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- Sources of Human Rights may be traced to the
 - Philosophical Thoughts
 - Spiritual insights
 - Religious thoughts in the form dharma of Hindus
 - Dhamma of Buddhists
 - Edicts of Ashoka national human rights provisions may be divided into two broad categories
 - Constitutional Provisions
 - Statutory provisions
 - Constitutional provisions of human rights are those provisions which arise from the constitution itself.
 - Preamble, fundamental rights, directive principles of state policy, fundamental duties, reservation for scheduled castes and scheduled tribes, Anglo - Indians and to other backward classes, are very important provisions for human rights.

Statutory provisions:

Statutory provisions are those provisions which have been driven from various enactments of central and state governments, protection of civil rights act SC & ST, Prevention of Atrocities Act, national commission of women's act, National Commission of minorities act and protection of Human Rights Act are very important.

National Human Rights Commission

NHRC was constituted under Section 3 of the 1993 Act for better protection of human rights. The term 'human rights' is defined in Section 2(d) of the 1993 Act, which reads as follows:

“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.”

It is autonomous i.e. it has been created by an Act of Parliament.

NHRC is committed to provide independent views on issues within the parlance of the Constitution or in law for the time being enforced for the protection of human rights.

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The Commission takes an independent stand. NHRC has the powers of a civil court and authority to grant interim relief, authority to recommend payment of compensation or damages.

Over seventy thousand complaints received every year reflects the credibility of the Commission and the trust reposed in it by the citizens.

NHRC has a very wide mandate and has unique mechanism with which it also monitors implementation of its various recommendations.

Composition of commission

- One Member who is, or has been, a Judge of the Supreme Court of India
- One Member who is, or has been, the Chief Justice of a High Court
- Two Members to be appointed from among persons having knowledge of, or practical experience in, matters relating to human rights

In addition, the Chairpersons of four National Commissions of (1.Minorities 2.SC 3.ST 4.Women) serve as ex officio members.

Appointment and Removal

The Chairperson and the Members of the Commission are appointed by the President of India, on the recommendations of a Committee consisting of:

- The Prime Minister (chairperson)
- The Home Minister

The Leader of the Opposition in the Lok Sabha The Leader of the Opposition in the Rajya Sabha

- The Speaker of the Lok Sabha
- The Deputy Chairman of the Rajya Sabha

Chairman and members hold office for a term of five years or until they attain the age of 70 years, whichever is earlier.

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After their tenure, the chairman and members are not eligible for further employment under the central or state government.

The president can remove the chairman or any member from the office under certain circumstances.

Functions and Powers of Commission

The Commission performs the following functions, namely:

- Inquire, suo moto or on a petition presented to it by a victim or any person on his behalf, into complaint of violation of human rights – this is extremely obvious negligence in the prevention of such violation, by a public servant.
- Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court.
- Visit, under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions of the inmates and make recommendations.
- Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation.
- Review the factors, including acts of terrorism that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- Study treaties and other international instruments on human rights and make recommendations for their effective implementation.
- Undertake and promote research in the field of human rights.

State Human Rights Commission

The protection of Human Rights Act of 1993 provides for the creation of not only the National Human Rights commission but also a state human rights commission at the state level.

Accordingly, twenty-three states have constituted the state human rights commission through official Gazettee Notifications.

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A state human rights commission can inquire into violation of human rights only in respect of subjects mentioned in the state list and the concurrent list of the seventh schedule of the constitution.

However if any such case is already being inquired into by the national human rights commission or any other statutory commission then the state human rights commission does not inquire into that case.

Role of voluntary agencies to promote Human Rights

- NGO played a primary role in focusing the international community on human rights issues.
- NGOs monitor the actions of government and pressure them to act according to human rights.
- Amnesty International :- (1961)
- To prevent and end grave abuse of human right.
- To demand justice for those whose rights have been violated.
- Children's defense fund (1973) :-
- It provides policies and programs that lift children out of poverty.
- Protect them from abuse and neglect & ensure their right to equal care and education.

Human Rights Action Center :- Works on the issues of the universal declaration of human rights. To innovate, create and develop new strategies to stop human rights abuses.

Human Rights Watch:- Hold power to end abusive practices and respect international human rights law.

Human Rights Without Frontier : (HRWF) Aims to protect Human Rights globally. Focuses on monitoring, research and analysis as well as promotion of democracy and the rule of law on the national and international level.

United Nations Commission on Human Rights

United Nations Commission on Human Rights (UNCHR) is a functional commission of the United Nations in 1946. It was replaced by the United Nations Human Rights Council in 2006.

Functions:

- To promote and protect the human rights that are guaranteed under international law.
- Promotes international cooperation for human rights.
- Plays the leading role on human rights issues and emphasize the importance of human rights at the international and national level.
- Stimulate and coordinates action for human rights throughout the United Nations System.
- Promotes Universal ratification and implementation of international standards.

Human Rights Courts:

Protection of Human Rights Act 1993 promotes the establishment of human rights courts at the district level. It has a great potential to protect and realize human rights at the grass roots.

Functions: -

- The objective of establishment of such courts is to ensure speedy disposal of cases relating to offence arising out of violation of human rights.
- The creation of the human rights courts at the district level has a great potential to protect and realize human rights at the grass roots.
- Responds to serious violations of human rights.
- Undertakes preventive human rights action.
- Promotes the establishment of national human rights infrastructure.

LGBT - Lesbian - Gay - Bi - Sexual -Transgender

Section 377 of Indian Penal Code:

Section 377 of the Indian Penal Code dating back to 1860, introduced during the British rule of India, criminalizes sexual activities “against the order of nature”. It was

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introduced by Lord Macaulay in 1860 as a part of IPC. It arguably includes the consensual homosexual sexual and transgender sexual activities, thus making them criminal offence. The punishment under this Section can be life imprisonment or imprisonment upto 10 years.

Earlier takes on Sec 377: In 2000, 172nd Law Commission report recommended first time to decriminalize Section 377.

- Naz Foundation an NGO for HIV/AIDS and sexual health filed a PIL in 2001 against Section 377 in Delhi High Court which dismissed the petition.
- In May 2008, the case came up for hearing in the Delhi High Court, but the Government was undecided on its position, with The Ministry of Home Affairs maintaining a contradictory position to that of The Ministry of Health on the issue of enforcement of Section 377 with respect to homosexuality. □
- In 2009, The Delhi High Court had held that Section 377 is in violation of Article 14, 15 and 21 of the Constitution in so far as it criminalises consensual sexual acts of adults in private. HC said that Section 377 to apply only to non-consensual, penile, non-vaginal sex, and sexual acts by adults with minors
- In 2013, the two judge Supreme Court Bench in the Suresh Kumar Koushal vs Naz Foundation case overturned the Delhi High Court order. SC said Section 377 is constitutional and applies to sexual acts irrespective of age or consent of the parties.
- A curative petition was filed by Naz Foundation and others in 2014.

View of Parliamentary panel: A parliamentary panel- the standing committee on social justice and empowerment, has suggested that the Centre should exempt the transgender community from the ambit of the law criminalising homosexuality, noting that welfare of this socially marginalised group requires an initiative in this direction.

Other recommendations: the panel has said that the Transgender Persons (Protection of Rights) Bill should recognise transgender persons' right to marriage, partnership, divorce and adoption.

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The latest verdict of SC :

- The Supreme Court struck down the judgment of 2014 upholding Section 377 of the Indian Penal Code.
- The nine-judge Bench concluded that the 2014 verdict by a two-judge Bench pandered to a “majoritarian” view to turn down the LGBT (lesbian, gay, bisexual, and transgender) community their inherent fundamental rights of life, personal liberty, equality and gender discrimination.
- The bench held that fundamental rights are not subject to minority or majority.
- It also observed that the chilling effect of Section 377 “poses a grave danger to the unhindered fulfilment of one’s sexual orientation, as an element of privacy and dignity”
- Finally the bench held that these rights are not illusory, but are real rights founded on sound constitutional doctrine.

Way forward

Sexual orientation is an essential attribute of privacy. Discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual,

The argument against Section 377 should not only be based on the right to privacy but also to be premised on the idea of the right to equality before the law.

The question of constitutionality of Section 377 is still pending consideration before a larger Bench, and it should be heard and decided in the appropriate proceedings.

However, by making sexual orientation an essential attribute of right to privacy, the SC has moved a step closer in decriminalising transgender and homosexual sexual activities.

2018: Supreme Court stated that if the criminality of consensual gay sex is done away, the social stigma attached to the LGBT community would go. Supreme Court delivered historic judgement; terms Section 377 of the IPC as unconstitutional/decriminalizes Homosexuality

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Transgenders Rights in Tamilnadu:

According to an estimate from 2015, about 16,380 people in Tamil Nadu identifies themselves as LGBT. Transgender people in Tamil Nadu are called Thirunar, Thirunangai (for transfeminine people) and Thirunambi (for transmasculine people). The term Aravaani in Tamil was widely popularised before 1990's

Social Security:

In a pioneering effort to solve the problems faced by transgender people, the government of Tamil Nadu established a transgender welfare board in April 2008. Tamil Nadu was also the first state to form a Transgender Welfare Board with representatives from the transgender community.

The Tamil Nadu state in India was the first state to introduce a transgender (hijra/aravani) welfare policy. According to the transgender welfare policy transgender people can access

free Sex Reassignment Surgery (SRS) in the Government Hospital (only for transfeminine people)

The government has also started issuing separate food ration cards for transgender people.

also issued an order on May 2008 to create a third gender for admissions to government colleges.

The Government decided to conduct a census on the transgender population in order to issue identity cards include transgender people as a “third category”, apart from the usual category of “male” and “female”. Given reservation and permission for alternate genders to appear for examinations conducted by Tamilnadu Govt. Alternative sources of livelihood through formation of self-help groups (for savings) and initiating income-generation programmes (IGP).

Questions:

1. Explain the challenges faced by the people with respect to Human Rights in India?
2. Human rights commission, composition, appointment, removal and term.