

YOJANA SUMMARY - APRIL 2020

Safeguarding Human Rights	2
Balancing Fundamental Rights and Duties	3
The Indian Parliament : Performance and Challenges	4
Panchayati Raj System	5
Checks and Balances	6
Gender Rights: Reflection, Commitment and Action	7

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Safeguarding Human Rights

By the Universal Declaration of Human Rights, the nations of the world were specifically exhorted to act as the guardians of human rights. By 1966, the United Nations General Assembly adopted two important covenants which are at the same time both general and universal, one dealing with civil and political rights and the other with economic, social and cultural rights.

The covenants -

- The International Covenant on Civil and Political Rights, 1966 and the Optional Protocol dealt with the rights of equality, personal liberty, freedom from arbitrary arrest and detention, freedom from rendering compulsory personal service, freedom of expression and conscience, right to participate in the administration of the country etc.
- The International Covenant on Economic, Social and Cultural Rights, 1966 deals with the right to work, the right to fair wages, the right to collective bargaining, the right to carry on trade or profession, the right to establish institutions to conserve culture etc.

Rights in Indian Constitution -

- Long before these international covenants came into force, the Indian Constitution has guaranteed several rights for its citizens which are known as fundamental rights as enshrined in Part III of the Constitution.
- Right to life, liberty, equality, dignity, freedom that includes right to profess, practice and propagate one's own belief, faith and worship and right against exploitation and rights of minorities towards culture and to establish education institutions are some of the enforceable rights which cannot be infringed upon by the State through executive action.
- The Constitution safeguards all citizens, individually and collectively, human rights by protecting basic freedoms. These are guaranteed in the Constitution in the form of six broad categories of Fundamental Rights, which are justiciable. Article 12 to 35 contained in Part III of the Constitution deals with Fundamental Rights.

Status of Fundamental Rights -

- The Fundamental Rights have been accorded prime importance in the Constitution of India. There have been judicial pronouncements which have upheld the superiority of the Fundamental Rights as provided in the Constitution.
- The Supreme Court of India in the Kesavananda Bharati case, Minerva Mills and IR Coelho case have upheld that though fundamental rights, as such, are not immune from amendment en bloc, particular rights or part thereof may be held as basic features which cannot be amended by exercising the power of amendment under Article 368 of the Constitution of India.

Human Rights -

In *Ranjitsingh Brahmajeetsing Sharma v/s State of Maharashtra*, the Supreme Court opined that gender injustice, pollution, environmental degradation, malnutrition, social ostracism of dalits are various forms of violations of human rights. The presumption of innocence is also a human right.

Recent judgements -

- In recent times, the Apex Court has been taking a lead in protection of the rights of the vulnerable communities like LGBTI etc.
- In the case of *National Legal Services Authority v/s Union of India*, the Supreme Court of India declared transgender people to be a 'third gender' and affirmed that the fundamental rights granted under the Constitution of India will be equally applicable to transgender people. The Court directed the Centre and the State governments to take steps to treat them as socially and educationally backward classes and to extend reservation in case of admission in educational institutions and for public appointments.
- The Supreme Court in *Navtej Singh Johar v/s Union of India* gave a historic, and unanimous decision on Section 377 of the Indian Penal Code, decriminalising homosexuality. The Court ruled that the sexual orientation is an intrinsic element of liberty, dignity, privacy, individual autonomy and equality, and that intimacy between consenting adults of the same-sex, is beyond the legitimate interests of the state.

Human Rights Commission -

- The growing concern regarding violation of human rights led to the enactment of Protection of Human Rights Act which provided for constitution of National Human Rights Commission (NHRC), State Human Rights Commission in states and Human Rights Courts for protection of Human Rights and for matters connected therewith of incidental thereto in the 44th year of the Indian Republic.
- The NHRC came into being in October 1993, in conformity with the Paris principles, adopted at first international workshop on national institutions for the promotion and protection of human rights held in October 1991, and endorsed by the General Assembly of the United Nations by its Regulations 48/134 of 20th December 1993.
- Since its inception in 1993, the Commission has registered 18,95,153 cases of human rights violations. Out of the same, 18,74,002 cases have been disposed off by the Commission. In totality, overall, the Commission has recommended compensation of Rs 181,20,00,026 in 6815 cases throughout the country.
- More than 99 percent of the NHRC's recommendations have been complied with by the States.
- The NHRC has also focused on other human rights issues like rights of the elderly, women, children, transgender, elimination of bonded labour, mental health and silicosis.
- The Commission has issued guidelines on important issues of custodial deaths, custodial rapes, encounter deaths during the course of police action and has also granted relief in form of monetary compensation as also recommending disciplinary action against the delinquent public servants.
- The Commission has made some important recent innovations - online complaint registration through HRCNet Portal, provision for the authorities to upload the reports directly on the HRCNet portal, taking on board the SHRCs in the HRCNet Portal to avoid duplication of cases, conducting video conferencing with the states to follow up the submission of reports. A dedicated MADAD counter has been established to assist the complainants in filing complaints.
- The NHRC is also concerned with the condition of prisons, prisoners, old age homes etc. The Commission through its own visits and also by the special rapporteurs finds out the situation prevalent in the prisons etc. and recommends corrective measures.

Balancing Fundamental Rights and Duties

To offset the increasing tendencies of indifference towards the business of the government amongst its citizens and to check fissiparous growth, the Constitution (Forty-Second) Amendment Act, 1976 introduced the concept of fundamental duties by adding Part IV-A, consisting of the sole Article 51A.

Duties - Individual or public in character?

- The fundamental duties are the mechanism that aims at striking a balance between individual freedom and social interests. These duties do not cast any public duties but are applicable only to individual citizens.
- However, in a judgement, the Supreme Court held that the Fundamental Duties are as important as Fundamental Rights and that though Article 51A does not expressly cast any fundamental duty on the State, the duty of every citizen of India is the collective duty of the state- its *de facto* enforceability in the sense that Article 51A is a yardstick against which the action of the State may be assessed.
- In *Union of India v/s Naveen Jindal*, the Supreme Court observed that fundamental duties are implicit in the concept of fundamental rights, the former providing certain restrictions on the exercise of the latter.

Enforceability of duties -

- There have been umpteen number of cases in which the various contours of Article 51A have been interpreted and applied by the Apex Court.
- The unenforceable duties have got a booster dose of contents as well as some sort of enforceability through increased references in various judicial pronouncements.
- In certain situations, where the Courts have been called upon to examine the reasonableness of any legislative restriction on the exercise of a freedom, the fundamental duties are of relevant consideration.

- Everybody should remember that entitlements come with duties and responsibilities as well. The grassroots approach should be to work earnestly and give practical expression to both the rights and the duties that democracy entails.
- The presence of a chapter on fundamental duties in our constitution along with the fundamental rights should have effect of reminding the citizen that every right one exercises is balanced by a duty he has to fulfil.
- Since the duties were spelt out by the preamble of the constitution, whatever is needed to achieve the goal set in the Constitution, is our obvious duty to perform - is a dictate of the preamble.

Conclusion -

Various current crises related to environment, mob-violence and terrorism etc could have been regulated to a large extent if the human values could be inculcated right from the formative period of life so as to lay a strong foundation for effectuation of Fundamental Duties along with the strong desire to avail the rights. Thus, there is a strong necessity to maintain a strong balance between the rights and the duties. One does not have existence as well as the meaning without the other.

The Indian Parliament : Performance and Challenges

As the central legislative body in India, the Parliament has four main roles - it makes laws, it holds the executive to account for its actions, it allocates government finances, and represents the interests and aspirations of citizens. The Parliament is also a constituent body in the sense that it can amend the Constitution.

Functioning of the Parliament -

- Over the years, the Parliament has been meeting for a fewer days. The number of sitting days has declined from 125-140 in the 1950s to about 70 days in the last twenty years.
- Also, disruptions have further reduced the amount of time available for discussion in the Parliament. During the 15th Lok Sabha, one-third of the scheduled time was lost to disruptions.

Area of Reforms -

There are some structural issues that need to be addressed to improve the effectiveness of Parliament. These include the repeal of anti-defection law, recording all votes on bills and major rebates, referring all bills to committees and strengthening the support system for committees.

1. The Anti-Defection Law -

- The Tenth Schedule of the Constitution was added in 1985 through the fifty second amendment. In brief, it provides for the disqualification of an MP if he defects from his party or if he does not vote in accordance with the whip issued by his party.
- Apparently, the anti-defection law goes against the very concept of representative democracy. It has weakened the role of Parliament as a body that scrutinises legislative proposals and that oversees the functioning of the executive.
- The accountability of the executive is the key role of every member of the Parliament. The members need to exercise their judgement, deliberate on issues, ask questions of the Government, and hold the Government to account. The anti-defection law negates this principle.
- It reduces the member to follow the instructions given by the party leader. If a party has majority in the Parliament, it means that there is no effective discussion on or challenge to a Government bill or motion.
- As members have no freedom to vote as per their judgement, it takes away the incentive to invest time and resources in understanding the nuances of issues before making a decision.
- Interestingly, the anti-defection law has had limited effect during no-confidence motions.

2. Committee Systems -

- Parliament constituted several committees, each typically having 20-35 members, to scrutinise various issues and make recommendations to the full House.

- These include financial committees, departmentally related standing committees (DRSCs), and various other committees such as those looking at privileges and ethics, setting the daily agenda for the two Houses, and looking to subordinate legislation.
- It may be useful to understand some critical work that committees perform which would be tough to do in the full house.
- The Committee system enables MPs to negotiate across conflicting priorities and positions. This can be seen from the fact that most reports are given a unanimous vote, though there are a few instances of dissent notes by some members.

Conclusion -

Parliament has done a remarkable job for nearly seventy years, helping manage internal tensions of perhaps the most diverse set of people in any country. These include revocation of the anti-defection law, making recorded voting mandatory and strengthening the committee system.

Panchayati Raj System

The Constituent Assembly preferred two-tier system of governance. In December 1946, when the resolution was presented on the aims and objectives of the India's Constitution before the Constituent Assembly, there was no specific reference to the villages and their governance.

BR Ambedkar's views -

- Dr BR Ambedkar, who had favoured the provincialism, expressed his opinion during a Constituent Assembly meeting. According to him, village republics in India are dominant by casteism and localism.
- Reforming Indian villages and bringing social development at the grassroots level requires a lot of time and effort.
- India's resources at the time of independence to be spent on developing global status of India and to solve the national problems such as providing food, shelter and clothing, health etc., of the public, rather than strengthening and reengineering the villages.

Pre-Constitution (73rd Amendment) Act, 1993 -

- After independence and adoption of the Constitution of India, Community Development projects were inaugurated in 1952 in line with the experiments at Shantiniketan, Vadodara and Nilokheri.
- In 1957, Balwant Rai Mehta Committee was constituted, which submitted the report stating that, 'Public participation in community works should be organised through statutory representative bodies.'
- National Development Council was established on the principle of democratic decentralisation, which spread the word 'Panchayati Raj' into the main frame of discussion about the rural development.
- First three-tier Panchayati Raj System was inaugurated on 2 October, 1959 in Nagaur, Rajasthan.
- The Jayaprakash Narayan Committee further strengthened the idea of Panchayati Raj and the Ministry of Community Development was brought under the Ministry of Food and Agriculture in 1971 and the word 'Community Development' was replaced with the 'Rural Development'.
- The Ashok Mehta Committee, 1978 is the one which recommended for introducing the Panchayati Raj as a Constitutional institution through an amendment. In spirit of Mehta Committee, the States including West Bengal, Karnataka and Andhra Pradesh brought in new initiatives by reviewing their local bodies by entrusting more powers and finances. The West Bengal Panchayat Act, 1973 brought direct elections at regular intervals as a compulsory provision, and deleted the discretionary power of the State in postponing the elections.

64th Amendment Bill -

The 64th Amendment Bill was introduced stating that, "Panchayati Raj is an important facet of democracy". Later, the 64th Amendment was followed by the 65th Amendment Bill that sought to endow urban local bodies in similar lines of Panchayati Raj. Though both the bills received the required constitutional majority, the bills failed to take the shape of amendment legislation.

Constitution (73rd Amendment) Act, 1993 -

- The Parliament of India recognised the existence of Panchayati Raj Institutions as a social institution and aimed to provide it the constitutional status by introducing relevant provisions into the Constitution.
- Article 40 of the Constitution which is part of the Directive Principles of State Policy states that, “State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.”

Post-73rd Amendment -

- After 73rd Amendment, Nagaur District of Rajasthan followed by Andhra Pradesh conducted the first elections for Panchayati Raj.
- The system brought the disadvantageous sections of population into the mainstream social and political empowerment through 2.4 lakh Panchayats and 2.8 million elected representatives, among them over 30% were women, 19% were SC, 12% were ST and also OBCs in proportion to the population in the most States.
- The digitalisation process of Gram Panchayats brought in transparency and good governance principles into the Panchayati Raj system. Ombudsman, Social Audit, Model Accounting System, Panchayat Performance Assessment initiatives were introduced to develop discipline and progress within the institution.
- The 13th Finance Commission awarded a divisible tax pool for panchayats, by granting them defacto recognition as the third tier of governance.

Way forward -

There is a lot more that needs to be done in this regard -

- Providing sufficient staff, office space and infrastructure,
- Allocating funds sufficient for carrying out the objectives of the Panchayati Raj institutions,
- Removing the word ‘discretion’ (Article 243G) and ‘creating mandatory obligation upon the States for devolution of 3Fs,
- Implementing the Provisions of the Panchayats (Extension to Scheduled Areas) Act (PESA) to address the demands of the tribal population living in rural areas,
- Urgent need of the effective functioning of the State Finance Commission with a priority of sustenance of PRIs,
- Special focus to be laid down on North Eastern States, 6th Schedule Areas,
- Focusing more on the effective functioning of Gram Sabhas.

Checks and Balances

The Constitution of any democratic country seeks to establish the fundamental organs of the government with well-defined duties and specific powers, making them answerable to the people. Accountability is ensured through periodic elections and internal checks and balances. Checks and balances within governmental institutions are necessary to constrain the government from abusing its power.

The Spirit of Constitutionalism -

- The areas of governance generally have been classified into the legislative (enactment of laws), the executive (enforcement of laws); and the judicial or the resolution of disputes relating to the enactment, enforcement, and application of laws.
- Constitutionalism envisages checks and balances and puts the powers of the legislature, executive and judiciary under restraint. The very essence of constitutionalism is that no organ of the state may arrogate powers to itself, beyond what is specified in the Constitution.
- As observed by KG Balakrishnan, former Chief Justice of India, “the Constitution lays down the structure and defines the limits and demarcates the role and functions of every organ of the State including the judiciary and establishes norms for their relationships, checks and balances.”

Functional Overlap: Legislature and Executive -

- India resorted to parliamentary form of government as opposed to presidential form of government. However, the Indian Parliament is not supreme as the British Parliament.
- In UK, Parliament is given immense power to amend, repeal or modify the Constitution but in India there is difference between statutory law and constitutional law.

- Parliament derives its mandate from the Constitution and has no unfettered or arbitrary jurisdiction to override the Constitution.
- President (Article 123) and the Governor (Article 213) has the power of making ordinances when both houses of the legislature are not in session, which has the same status as that of a law of the legislature.
- The President or the Governor has the power to grant pardon or modify the punishment of a convicted person. The legislature performs judicial function as Parliament can punish members as well as outside for breach of its privileges or its contempt by reprimand, admonition or imprisonment.
- The Forty-Second Amendment (1976) introduced Article 323A and 323B which authorise Parliament and the state legislatures, respectively, to create tribunals to which the power of adjudication of disputes on various subjects can be transferred. The jurisdiction of the courts is excluded in respect of those subjects.

The Role of Judiciary -

- The application of judicial review to determine constitutionality of the legislation and to review the executive decision sometimes creates conflict among the three pillars of democracy. However, the Constitution speaks through the Supreme Court which sits in judgement over the Constitutional validity of laws enacted by the Parliament.
- The decision of the court further legitimises or stigmatises the law or any other decision of the legislature or the executive.
- Article 32 of the Constitution makes it the guardian of the inviolable fundamental rights for the protection of which it can issue writs. Even High Courts enjoy this power under Article 226 for the protection of not only fundamental rights but also other legal rights.

Judicial Activism v Overreach -

- The gaps left by the legislature in matters of legislation or by the executive in the matter of executive governance are expected to be filled by the judiciary.
- Judiciary may get activated by the people (Public Interest Litigation) or by its own (*suo moto*).
- Judicial activism is a judicial response to a situation warranting immediate remedial measures. It is an affirmative concept that has to be marked by promptitude, diligence and consistency.
- In recent decades, the judiciary has been frequently charged with overstepping (judicial overreach) into the areas of other wings by interpreting laws in a particular way.
- The courts often try to frame laws not by interpreting the existing laws but by directing the State to formulate and implement policies which are required to be in conformity and in consonance with the views of the particular court or courts.

Way forward -

- Good governance necessitates balance among the three pillars of government - executive, legislature and judiciary with effective checks over one another.
- The three wings need to brainstorm on how to move forward in the change scenario to realise the agenda of *Sabka Saath, Sabka Vikas, Sabka Vishwas*.

Conclusion -

Every organ of the government is required to perform all the three types of functions, namely, the legislative, executive and judicial. Further, each organ in some respects is dependent on the other organs which keep a check and balance it. A balance as opposed to conflicts is very necessary to achieve the ultimate public welfare and smooth functioning of the constitutional machinery.

Gender Rights: Reflection, Commitment and Action

Constitution ensures protection against discrimination on the basis of gender through Article 14, 15(1) and 16(2). Article 39(a), 39(c) and 42 of the Directive Principles of State Policy provided in Part-IV guides that India's governance shall ensure gender equality in law and policy.

Article 51A(e) imposes fundamental duty on the citizens of the country to renounce practices derogatory to the dignity of the women and to promote harmony and the spirit of common brotherhood amongst all people of India.

Constitutional Provisions promoting gender equality -

- Preamble - Socialism, equal distribution of opportunities and resources, social justice, assuring the dignity of the individual,
- Article 14 - Equality before laws and equal protection of laws,
- Article 15(1) - Prohibition of discrimination on the grounds of sex,
- Article 15(3) - Empowering state to make special provisions for women and children,
- Article 16(2) - Equality of opportunity in matters of public employment; prohibition of discrimination on the grounds of sex,
- Article 38 - State to secure a social order for the promotion of welfare of the people with social justice and equal opportunities,
- Article 39(a) - Secure, men and women equally, the right to an adequate means of livelihood,
- Article 39A - Equal justice and free legal aid,
- Article 42 - Just and humane conditions of work and maternity relief,
- Article 51A(e) - Promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women,
- Articles 243D (3) and (4) 243 (3 and (4) - Reservation of seats for women candidates in Panchayats and Municipalities.

Initiatives of Government -

- Pan India - Emergency Response Support System (ERSS), single internationally recognised number - 112 for all emergencies with artificial intelligence to identify the location of distress,
- National Policy for the Empowerment of Women 2001,
- Technology based smart policing and safety management,
- Cyber-crime reporting portal specific to women and children to report obscene content,
- National Database of Sexual Offenders (launched in September 2018) for facilitating the investigation and tracking the habitual sexual offenders,
- Launched 'Investigation Tracking System for Sexual Offences (ITSSO)' in February 2019 to monitor and track time-bound investigation of sexual assault cases according to Criminal Law (Amendment) Act, 2018.
- Over 700 Stop Centres were approved and 595 are fully functional pan India exclusively designed to provide medical aid, police assistance, legal and psycho-social counselling, court case management, temporary shelter for survivors of sexual offences.

Goals for Gender Equality in India -

- Advancement, development and empowerment of women,
- Creative conducive and protective environment for women through political, social and economic policies,
- De jure and de facto guarantee of enjoyment of fundamental rights for women,
- Equal access to development, employment and empowerment for women,
- Strengthening legal and administrative systems to eliminate all forms of discrimination and crimes against women,
- Social re-engineering to do away with the discriminatory and derogatory practices prevalent in India,
- Elimination of discrimination and all forms of violence against women and the girls child, and
- Encouraging women to enter into all fields of employment and commerce.