

February 2020 - May 2020

VOLUME 5

NUMBER 3

ISSN No. 2395-7484



Progressive Education Society's
DNYANAMAY
॥ ज्ञानमय ॥

A Multi Disciplinary Peer Reviewed Research Journal
" Integrating Knowledge through Research "

Special Issue on
International Conference on Emerging Trends of Human Rights Violations : Contemporary Socio-Legal Issues

Health Consumerism : Approach to a New Perspective
Prof. Dr. Gajanan R. Ekbote

Towards A Fourth Generation of Human Rights in India
Dr. Saba V. M. Da Silva

Development of Human Rights Regime Through Transformative Constitutionalism In India
Dr. Priya Dhanokar

Development As A Human Right of Individual Worker in Unorganized Sector
Ms. Janhavi N. Ghodke

Doctoral Research in Human Rights with Special Reference To Law
Dr. Sunita Mane, Dr. Jagdish Kulkarni

Sexual Offences Against Women In India : Human Rights Perspective
Ruby Zenilda Luis

Right To Clean & Healthy Environment In India: Basic Human Right
Niharika Narayan Chari,

Generations of Human Rights - A Critical Appraisal
Ms. Merville Rodrigues

Study on Legislations For The Protection of Children
Saprem Shirvoikar, Satyam Shirvoiker

Mob Lynching: New Threat To The Society
Yamini Pratap Dalvi

Changing Paradigm of Human Rights of LGBTQ Community In India
Ms. Shruti Nadkarni

**Rights of Disabled Person To The Infrastructure Facilities
To Acquire Higher Education**
Ms. Sonia B. Shirodkar

Development of Human Rights Regime Through Transformative Constitutionalism In India

Dr. Priya Dhanokar

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"While the language of the Constitution does not change, the changing circumstances of a progressive society for which it has designed yield new and fuller import of its meaning."

Justice Black and Justice Frankfurter of USA

Introduction:

India being a country, which is governed by the written Constitution, 'Constitutionalism' constitutes a fundamental notional principle behind its working. Having written Constitution, the higher judiciary, specifically the Supreme Court of India is conferred with the Constitutional duty to act as the guardian and protector of our Constitution. Thereby, primary function of the higher judiciary is to decipher the meaning of Constitutional provisions. A necessary consequence of this duty is, to evolve such innovative interpretative tools which can make the Constitutional provisions adoptable to the changing norms and ideals of the Indian society with time. In this context, an established fact needs to be mentioned that, the Constitution of India is the organic document. Words used in it does not have fixed meaning for all times to come. Constitution of India contains such words, which are open textured. Moreover, a Constitution is not a law which contains rules of the passing hour but contains principles for an expanding future. Thereby, framers of the Constitution of India drafted its provisions in such a way that, they can be moulded according to the need of the time.

As far as provisions enshrined under Parts III and IV are considered, the phraseology of these provisions depict that, framers of the Constitution of India focused on the substance rather than form. All the provisions of Fundamental Rights and Directive Principles of State Policy in substance mean to foster and protect individual liberty and freedom. Provisions in both these parts cover all the dimensions of human rights and they are required to be fostered and protected for all times to come. Therefore, Supreme Court of India has a significant role to play in this regard. The development of human rights jurisprudence

in India reveals that the Supreme Court of India has successfully shouldered its responsibility as per the changing needs and expectations of time. Over the period of time, the Supreme Court of India has rendered many decisions giving creative, purposeful, liberal and dynamic interpretation to the provisions of Fundamental Rights and Directive Principles so as to expand their ambit and thereby have evolved a distinct human rights jurisprudence in India. Notion of 'transformative constitutionalism' is one of the outcome of judicial response to the development of human rights jurisprudence in India. The same is discussed as under.

Constitutionalism-Indian Perspectives:

Modern conception of Constitutionalism is founded in the theory of 'social contract' as propounded by the natural law jurists namely, Thomas Hobbes, John Locke and Rousseau. According to these jurists, the focus of the concept of Constitutionalism is to provide Constitutional stability. It manifests itself in the form of procedural stability, accountability, responsibility and openness in governmental actions.

As far as the application of the concept of Constitutionalism to the Indian context is considered, it can be said that, through the concept of Constitutionalism, the spirit of our constitution is attempted to be kept alive and is therefore practiced for years together. Primarily, Constitutionalism implies guarantee of human rights to the individuals, which constitutes limitations on the powers of the State. The essence of Constitutionalism lies in the control of powers of different limbs of the State by reciprocal system of checks and balance. Thus, in order to realise constitutionalism, the legislatures and executives are required to act keeping in view the human rights and duties enshrined under the Constitution of India. In case, the actions of the legislatures and executive tend to violate human rights, the higher judiciary can invalidate such actions. It is thus submitted that, mere adoption of written Constitution does not by itself sufficient