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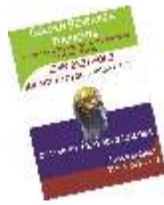
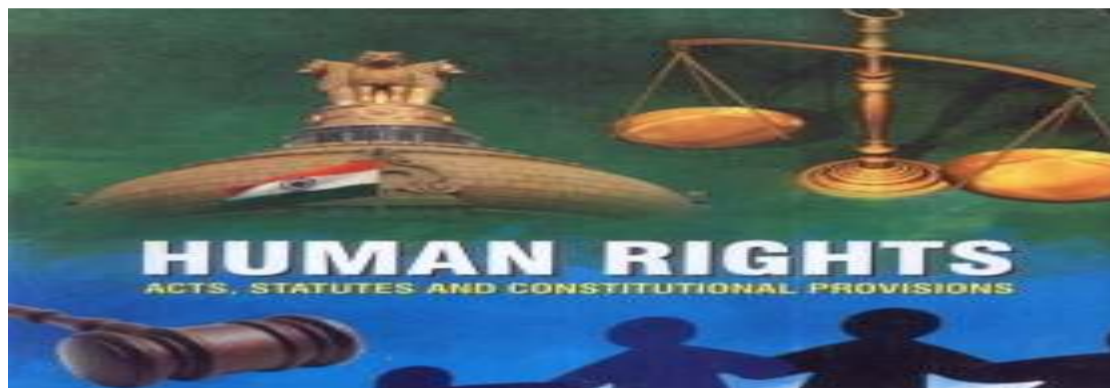
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DEVELOPMENT OF HUMAN RIGHTS IN INDIA



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ABSTRACT

Human Rights are as old as the history of human civilization. The Indian history proves that human rights were as much manifest in the ancient Hindu and Islamic civilizations as in the European Christian civilizations. Human rights in the modern sense have taken shape in India during the freedom struggle which ultimately resulted in the embodiment of human rights in the Indian Constitution. The present paper examines the origin and development of human rights in Indian since ancient times to present days.

KEY RECORDS :- Human Rights, Human civilization, Freedom struggle, etc.

INTRODUCTION

Human Rights have become a matter of great concern all over the world in the present days. Human Rights refer to 'the basic rights and freedoms to which an individual is entitled by virtue of his status as a human being.' Human Rights are inherent in human nature and necessary to live a life with respect and dignity. Human Rights constitute the very source of all rights of human beings. They provide for moral foundation of any system of rights. Human Rights have to do with the all round development of the human being in harmony with that of his fellow-beings in the totality of the relations in a society. Human Rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs.¹

Human Rights are as old as human civilization and have gradually evolved firstly in national law and assumed greatest manifestations at intersectional level during the twentieth century. The name 'Human Rights' is recent and Western in origin. 'Human Rights' is a fairly new name for what was formerly called 'the rights of men'. In fact, 'the rights of men' had, in turn, replaced the original term 'natural rights'. The rights of men have been the concern of all civilizations from time immemorial. The concept of the rights of men and other fundamental rights were not unknown to the people of earlier periods.²

The general belief is that the concept of human rights is Western. But it is not justified to limit the origin of the concept of human rights to only Western civilization. The history of human rights involves religions, cultural, philosophical and legal developments throughout recorded history. While the modern human rights generations originated in the twentieth century, the concept can be traced through all major religions, cultures and philosophies. The rights of human beings had a place in almost all the ancient civilizations of the world.

India, being the motherland of one of the oldest civilizations of the world and the birth place of diverse cultures and religions, has a very rich heritage of human rights ideals and values. The Indian culture perceives the individual, the society and the universe an organic whole. Everyone is a child of God, and all fellow beings are related to one another, belonging to a universal family. Religious prayers would ask of God to make all peoples of the world happy and prosperous. The historical account of ancient India proves that the human rights were as much visible in the ancient Hindu and Islamic civilizations as in the European Christian civilizations. Ashoka, Prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.³

Human Rights during Ancient India

The Ancient Indian treaties e.g. Vedas, Puranas, Mahabharata, Bhagwad Gita, Kautilya's Arthashastra etc. elaborated the ideas of human rights in the form of humanitarian values. While the ancient texts tend to emphasize the principle of equality between individuals, there is no doubt that there was always a gap between the ideal and the ground reality.

The quest for equilibrium, harmony, knowledge and truth inspired the ancient Indian minds more than their counterparts the Greeks and the Romans. The basis of ancient human rights jurisprudence was Dharma- the ideal of ancient Indian legal theory was the establishment of socio-legal order free from traces of conflicts, exploitations and miseries. Indeed such a law of Dharma was a model for the universal legal order.⁴ The central and functional focus of 'Dharma' is social order. The message is 'Dharma' as the supreme value, which binds kings and citizens, men and women. Human Rights gain meaning only when there is an independent judiciary to enforce rights. Here, the Dharamsastras are clear and categoric.⁵

The root of the concern for human rights in Vedic age may be traced in religion, humanitarian traditions and the unceasing struggle for freedom and equality. Theology presents the basis for a human rights philosophy stemming from a law higher than the state and whose source is the Supreme Being. Since the rights flow from a divine source, they are inalienable by moral authority.

In Ancient India, references occur as early as in the Rig Veda to the three civil liberties of Tana (Body), Skridhi (dwelling house), and Jibasi (life). Long before Hobbes, the Indian epic Mahabharata described the civil liberty of the individual in a political state. Ancient Indian society was a highly structured and well organized affair with the fundamental rights and duties not only of individuals but of classes, communities and castes clearly laid down. The concept of Dharma was precisely that rule of

law-the Supreme law which governed the sovereign and the subjects alike and covered the basic principles involved in the theory of rights, duties and freedoms.⁶

Bhagavat Gita being a part of Mahabharata preaches to meet the obligations and duties of life, always keeping in view the spiritual background of human existence which is the manifestation of an ultimate and the infinite. This emphasis on the individual and the guiding principles of his success, from the base from which the essence of the modern conception of human rights can be deduced.⁷

Kautilya, the author of the celebrated political treatise Arthashastra not only affirmed and elaborated the civil and legal rights first formulated by Manu but also added a number of economic rights. He ordains that "the king shall provide the orphan, the aged, the infirm, the afflicted and helpless with maintenance, he shall also provide subsistence to the helpless expectant mothers and also to the children they gave birth to".⁸

In the past-Vedic period, the rise of Buddhism and Jainism were certainly a reaction against the deterioration of the moral order as against the rights of privileged class. A close scrutiny of Buddhist period reveals that people were equal in all fields of their life. Life was more human and liberal and repudiated caste distinctions. After Buddha, Ashoka protected and secured the most precious of human rights particularly right to equality, fraternity, liberty and happiness.⁹ Ashoka's post-Kalinga regime, sown the seeds of a humanitarian society. The law of piety, which was the moving spirit of that time, had in fact all the elements of a modern welfare state. Ashoka's legal regime not only prescribed was propaganda (it should be remembered that in the contemporary world ruthless violation of human rights takes place during war, as it happened in the Vietnam and Kampuchea wars), it also made provisions for freedoms like freedom from hunger, Health care, educational facilities and certain other social amenities in the Ashoka Rule were keshaps initial efforts in the direction of realization of social, economic and cultural rights.¹⁰ Ashoka also secured the civil liberties. Even forestfolk in his dominion enjoyed security of life, peace of mind and were enjoying their life on par with other people in the society.¹¹

Human Rights during Mughal Rule

The concept of human rights got lost on its way in the dark and narrow alleys of the middle Ages. With the invasion of India by Muslims created new situation wherein the Muslim rulers or Sultans followed a policy of discrimination against the Hindus. There was one law for the Muslim (faithfuls) and another for Hindus (Kafirs) and the principle of equality was not given much importance.¹²

However, at a later stage of Mughal Rule changes took place. The Mughal rulers especially with Akbar a new era began in Mughal history of India in the field of Human Rights, with his policy of universal reconciliation and tolerance. Besides freedom of trade, freedom of religion, at least in a limited sense, was a fascinating aspect of the Mughal period. Akbar himself respected all faiths. He married a Rajput princess, who continued to enjoy freedom of worship. Akbar never used force to impose his Din Illahi (divine religion) on his subjects (which could have). Infact, Jains, Parsis, Hindus and Christians all took their share in the decision-making process of the Akbar administration. He followed the path of Sulh-i-Kul or universal toleration or peace with all.¹³

Similarly, parallel to Akbar's exquisite religious reform policies, religious movements like Bhakti (Hindu) and Sufi (Islamic) made remarkable contributions towards eliminating the irreligious practices of the contemporary society. These movements tried to revive the ancient humanist tradition and preached the sacred principles of humanism and universalism denouncing the narrow sectarianism prevalent in both the religions Hindu and Muslim.¹⁴ The trend initiated by Akbar, was followed by his

son Jehangir, too, but reversed by Aurangzeb though the Marathas and the Sikhs opposed and fought the fanaticism of Aurangzeb and his successors.. Great Saints like Shankara, Ramanuja, Madhava, Tulsidas, Kabir, Guru Nanak and others reinterpreted ancient Indian values of truth, righteousness, justice and morality.

Human Rights during British Rule and Freedom Struggle

Human Rights in the modern sense have taken shape in India during the British rule. The Indian National Congress, which was in the vanguard of freedom struggle, took the lead in this matter. National struggle for independence was truly an attempt of the Indians to secure fundamental human rights for all the people with the result of that the promulgation of the Constitution by the people of India in January 1950 ushered in the heroic development of human rights in India.

Humanitarian ideas became more popular from the beginning of the 19th century in India. Some Indian leaders, Raja Ram Mohan Ray-one of these leaders, being influenced by English education started a movement for Renaissance and Reformation. These movements compelled the British rulers to secure some humanitarian values in India by imposing restraints upon unjust Indian traditions. For example, the Abolition of Slavery (1811), Sati (1829) and Female Infanticide (1830), the formation of the Torture Commission on the Madras Presidency (1855), Widow Remarriage Act (1856), enactment of Indian Penal Code (1860), The Factory Act (1891), the Age of Consent Act (1891), Prohibition of Child Marriage (1929), Madras Children's Act and the Madras Elementary Education Act in 1920, were important steps in this direction.

But the British Rulers discriminated against Indians in the matters of their political and civil liberties and rights. The legislature, executive and judiciary were oriented to protect and promote the interests of the British. So the National struggle for freedom, from its earliest stages, in its practical manifestation was largely directed against racial discrimination and securing basic human rights for all the people.

The first explicit demand of the people of the Indian sub-continent for fundamental rights found place in the Constitution of India Bill, 1895, prepared by Indian National Congress, also known as the 'Home Rule Document', talked about a Constitution guaranteeing every one of the citizens basic human rights like freedom of expression, inviolability of one's own home, right to property, equality before law, right to personal liberty and right to free education etc.¹⁵

A series of resolutions adopted by the Indian National Congress between 1917 and 1919 repeated the demand for civil rights and equality of status with English and in 1925 finalized the draft of 'Commonwealth of India Bill' embodying a declaration of Rights. Further, Madras Congress of the Indian National Congress in 1927 demanded incorporation of a Declaration of Fundamental Rights in any future constitutional framework. A committee under Moti Lal Nehru was appointed. The Nehru Committee Report declared that the first concern of Indian was, 'to secure the Fundamental Rights'; that have been denied to them. In writing a Constitution, the report continued, "It is obvious that our first care should be to have our fundamental rights guaranteed in manner which will not permit their withdrawal under any circumstances."¹⁶

The Simon Commission, appointed by the British Government in 1927, however, totally rejected the demand voiced by the Nehru Committee Report. But, it is interesting to note that the Constitution of the Republic of India enacted in 1950, incorporated ten of the nineteen rights enumerated in the Nehru Committee Report, 1928.¹⁷ Karachi session of Congress in 1931 adopted a detail programme of 'Fundamental Rights'. The demands for a declaration of fundamental rights in

constitutional document was again emphasized by several Indian leaders at the 'Round Table Conferences'. Despite, all these developments, the Government of India Act, 1935 was passed without any bill of rights.

The further stage of the development of Fundamental Rights in India was 'Sapru Committee Report', published at the end of 1945. This committee was appointed by 'All Parties Conference in 1944-45' with Sir Tej Bahadur Sapru as its Chariman. Sapru Report gave a standing warning to all that what the Constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civil rights, equality of liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of the ordinary applications of life.¹⁸

The British Cabinet Mission in 1946 reorganized the need for a written guarantee of Fundamental Rights in the Constitution of India in paragraph 19 and 20 of its statement of May 16, 1946, envisaging a Constituent Assembly for framing the Constitution of India. It recommended the setting up of an Advisory Committee for reporting to the Assembly inter-alia on Fundamental Rights.¹⁹

Indian Constitution and Human Rights

The Indian Constitution (1949) was drafted even before the Universal Declaration of Human Rights (1950), but it was adopted at a time when the deliberations for the Universal Declaration were in the air, so that the framers of the Indian Constitution were influenced by the concept of human rights, and already guaranteed most of the human rights, which later came to embodied in the International Covenant in 1966.

The Preamble of the Indian Constitution expresses the resolution of the people of India to secure to all Indian citizens 'justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote, among them all, fraternity, assuring the dignity of individual and the unity and integrity of the nation.' Thus, the preamble concisely sets out quintessence of human rights which represents the aspirations of the people, who have established the constitution.

The wise founding fathers of our constitution have given a detailed list of the human rights and incorporated them in the form of judicially enforceable Fundamental Rights and rights not as enforceable as Directive Principles. The Judicially enforceable fundamental rights, which encompass all seminal civil and political rights and some of the rights of minorities, are enshrined in Part III of the constitution from Article 12 to 35. These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, and the right to constitutional remedies.

Judicially non-enforceable rights in Part IV of the constitution are chiefly those of economic and social character. However, as Article 37 makes it clear, their non-justifiability does not weaken the duty of the state to apply them in making laws, since they are "nevertheless fundamental in the governance of the country." Additionally, the innovative jurisprudence of the Supreme Court has now read into Article 21 (the right to life and personal liberty), many of these principles and made them enforceable.²⁰

The framers of the Indian Constitution were inspired by the ideals of international peace and respect of human rights as embodied in the U.N. Charter and the Universal Declaration. As to the first objective, they grafted a provision in Article 51(C) of the Constitution, "The state shall endeavor to foster respect for international law and treaty obligations in the dealings of organized people with one another."

Mechanism for the Protection of Human Rights

For the implementation and protection of human rights, the central government has enacted many acts such as The Protection of Civil Rights Act 1955, Suppression of Immoral Traffic in Women and Girls Act 1956, Maternity Benefit Act 1961, Dowry Prohibition Act 1961, Equal Remuneration Act 1976, Bonded Labor Act (Abolition) Act 1976, The Child Labor (Prohibition and Regulation) Act 1986, Juvenile Justice Act 1986, Indecent Representation of Women (Prohibition) Act 1986, Sati (Prevention) Act, 1987, The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, The Mental Health Act, 1993, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995, etc.

In order to monitor implementation of the constitutional objective for the welfare of the weaker sections of the nation, the central government has also appointed a National Commission for Minorities, a National Commission for Women, a National Commission for Protection of Child Rights, a National Commission for Safai Karamcharis, a National Commission for Scheduled Castes, a National Commission for Scheduled Tribes and a National Commission for Backward Classes. The freedom of the press is monitored mainly by the Press Council of India since 1979.

A network of laws, too wide to be portrayed in extenso, exists to give effect to the broad range of human rights recognized in the constitution. It must be noted, however, that the human rights enumerated in the various multilateral treaties to which is a party²¹, and also found in the Indian Constitution and laws have not been defined in identical terms in the latter, nor are all the rights mentioned in the treaties specifically recognized in the Constitution and the laws in extenso.²²

However, the innovative jurisprudence of the Supreme Court seeks to update and harmonize the Indian law with the emerging international norms, and application of these norms taking into account the special conditions obtaining in India. It would seem, therefore, that the guarantee of life and personal liberty in Article 21 of the constitution is adequately all-pervasive of human rights, both present and evolving.

The Judiciary has become a vanguard of human rights in India. It performs this function mainly by innovative interpretation and application of the human rights provisions of the constitution. The Supreme Court of India has in the case *Ajay Hasia V. Khalid Mujib* held that it has a special responsibility, "to enlarge the range and meaning of the fundamental rights and to advance the human rights jurisprudence."²³ The Supreme Court of India and High Courts have broad powers under the constitution to enforce the fundamental rights and they have liberally interpreted these powers. The judiciary has contributed to the human rights in two ways: (a) the substantive expansion of human rights under Article 21 of the Constitution (b) the procedural innovation of Public Interest Litigation for the protection of human rights of poor and downtrodden people.

The Protection of Human Rights Act, 1993

The creation of National Human Rights Commission (NHRC) under the Protection of Human Rights Act, 1993²⁴ marked the beginning of a new era for the protection and implementation of human rights in India. The NHRC though has recommendatory character, but its role is appreciable. It is doing a wonderful job by entertaining complaints regarding violation of human rights in different parts of India. Since its establishment, the NHRC has firmly showed that there is an integral relationship between the proper promotion and growth of civil and political rights and furtherance of economic, social and cultural rights. It has greatly heightened the dignity and worth of large numbers of the people of India.

Since, India is a vast country, single Commission could not be enough. Therefore, apart from the NHRC, the Protection of Human Rights Act (1993) provides for State Human Rights Commissions (SHRCs)²⁵ and Human Rights Courts in districts.²⁶ However though NHRC is mandatory at the Centre under section 3 of the Act, it is not so in the case of states. The use of word "May" in section 21 of the Act makes the constitution of SHRC advisory and not mandatory for the states. As a consequence to this, unfortunately, even after 22 years of enactment of the Protection of Human Rights Act, many states have not constituted State Human Rights Commission.²⁷ Like State Human Rights Commission, it is not mandatory for the states to create Human Rights Courts in each and every district as section 30 of the Act expressly uses the words the state "may" set up the courts. That is why, only a few states have constituted Human Rights Courts. Hence amendments are required to be made in this Act of 1993, by imposing mandatory responsibility on the state to constitute State Human Rights Commission and Human Rights Courts for the better promotion and protection of human rights.

Despite extensive constitutional and statutory safeguards, there continues to be significant human rights abuses in the country due to lack of awareness and sensitivity and strong policy. The proper implementation of the Human rights needs the full cooperation of the government and government agencies. In India, the Judiciary, NGOs, Human Rights institutions like NHRC and SHRCs and the Media can play significant role to this regard.

To sum up, the concept of human rights is neither entirely Western nor modern. In India, human rights find place since ancient times, though in the Modern sense has taken shape during the British Rule which ultimately resulted in the embodiment of human rights in the Indian Constitution. Since independence, the Government of India is quite eager to promote and protect the human rights of the Indian people through welfare legislations. The role of Judiciary in the protection of Human Rights is also noteworthy.

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24. Chapter V sections 21 to 29 of the Protection of Human Rights Act, 1993.
25. Chapters VI sections 30 and 31 of the Protection of Human Rights Act, 1993.
26. As on 31 December 2015 only 23 states have constituted State Human Rights Commission. For details and updates see <http://nhrc.nic.in/>.

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