
Human Rights in India Present and Past

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ABSTRACT

The term 'Human Rights' is comparatively recent in origin, but the idea of human rights is as old, as the history of human civilization. The new phrase 'Human Rights' was adopted only in the 20th century from the expression previously known as 'National Rights' or 'Rights of Men'. It can be said that Human Rights is a twentieth century name for what has been traditionally known as natural rights or in a more exhilarating phrase, the rights of man. These rights of human beings are not derived from being a national of certain state, but belong to them because of their very existence and are based upon the attributes of human personality. They are derived from the inherent dignity and worth of human beings. As rightly observed by **Jacques Maritain**, "The human person possesses rights because of the very fact that it is a person, a whole, master of itself and of its acts, and which consequently is not merely a means to an end, but an end, which must be treated as such". The expression 'dignity of human person' means nothing if it does not signify that the human person has the right to be respected, is the subject of rights, possesses rights, to have human rights, one need not do anything special than be born a human being. The rights of man have been the concern of all civilizations from time immemorial. These 'rights of man' had a place in almost all the ancient civilizations of the world. Human rights have existed, in however, nascent a form, ever since man, as a gregarious animal, has lived in communities, families, clan, tribe, village, town or nation and new in an independent world community. In the middle- east, the Babylonian laws, the Assyrian laws and the little laws provided for the protection of the rights of man. In India, the Dharma of Vedic period and in China, the jurisprudence of Lao-Tze and Confucius protected rights. In the west, a number of rights, bearingsome resemblance to what we call civil and political rights today, were available to a section of people. Cicero, the great Roman jurist, tells us that the Greek stoics, around 200-300 years B.C., developed, on the basis of what we now consider as basic human rights. Frankly speaking, though the philosophy of Human Rights in India has come a long weary way yet the progress though the historical path has always remained gradual and never lost its link with past.

Introduction

In recorded history and ancient scriptures, there have been references on the basic Human Rights, though they were not referred to by that name. The truth is that the concept of rights of human beings is neither entirely western nor modern. There are numerous thinkers who opine that the history of human rights and fundamental freedoms did not begin with the Magna-Carta signed by King John of England in 1215. Nor did the world come to know of them for the first time through the endeavors of like Rousseau and Jefferson or the proclamation of the declaration of Independence by the representatives of the thirteen North American Colonies in 1776, and the adoption of the declaration of the Rights of man and of the citizen by the National Assembly of France in 1789. The Indian history is warranted by the fact that human rights jurisprudence has always occupied a place of prime importance in India's rich legacy of historical tradition and culture. This is evident in the prevalence of different cultures, traditions faiths in India. The truth is that what the west has discovered about human rights now, India had embedded the same in its deep-rooted traditions since time immemorial. The philosophy of human rights in the modern sense has taken shape in India during the course of British rule. The Indian National Congress, which has in the vanguard of freedom struggle, took the lead in this matter. National struggle for freedom was truly an attempt of the Indians to secure basic human rights for all the people with the result that the promulgation of the constitution by the people of India in January 1950 ushered in the heroic development of the philosophy of human rights in India. The historical account of ancient Bharat proves it beyond doubt that the Human Rights were as much visible in the ancient Hindu and Islamic civilizations as in the European Christian civilization. Ashoka, Prophet Mohammed and Akbar cannot be excluded from the genealogy of human rights.

Human Rights in Ancient India

The quest for equilibrium, harmony, knowledge and truth inspired the ancient Indian minds more than their counterparts the Greeks and the Romans. About 5000 years ago, ancient Indian Philosophers and thinkers expounded a theory of higher moral law over and above positive law embodying certain values of universal validity like Dharma (righteousness), Artha (Wealth), Kama (desires) and Moksha (salvation), with a view to establish a harmonious social order by striking a balance between inner and outer, spiritual and material aspects of life. In ancient India, law, which was structured on the philosophy of Dharma, did not have much scope for religious discrimination. Law of Rita or Dharma in ancient India made a bold attempt of building an organized social life wherein each individual realized his goals within the parameters of social norms of morality. We learn from Mahabharata that dharma was ordained

for the advancement of all creatures as well as for restraining creatures from injuring one another. In the Bhagwat Gita righteousness has been described as the essence of dharma. The Upanishads speaks of dharma as the foundation of the whole universe, through it one drives away evil. In the Vedic Era, King or monarch was not above law and on violation; he could be punished like any other citizen. The Vedas and Smritis have spoken highly of equality of brotherhood e.g. Vasudeiva Kutumbakam (the whole world as one family). The idea of Equality was germane to the Vedas. Vedic ethics had idealized an equality of treatment among equals. All human beings are equal, and that conduct is moral which is based on the principle of equality. In the whole eighteen Purans Vyasa has said two things: doing good to another is right, causing injury to another is wrong. The references with regard to equality can be in Vedas to the effect that "Ajeyeshthaso ak nisthas yetso bhraterona sobhagaya" which means 'no one is superior or inferior, all are brothers, all should strive for the interest of all and should progress collectively. Manu states that it was the duty of the King to uphold the law as he was a much subjected to law as any other person. Panini also claims that it was the duty of the King to protect his subjects against disorder and anarchy. References are available in the Rigveda which speak of three civil rights viz. Tana (body), Skridhi (dwelling place) and Jibasi (life). **B.A. Selector** points out that for the first time for the formulation of what may be termed rights even in the modern sense can be found from the time of Kautilya. He classified them as civil rights, economic rights and legal rights. In the fourth century B.C. we find in Kautilya's Arthashastra a specific injunction to the effect that the King should provide the orphan, the dying, the infirm, the effected and the helpless with maintenance, he shall also provide subsistence to mothers as well as the children whom they give birth to. **U.N. Ghoshal**, an eminent historian, point out a number of civil rights, enjoyed by the individual in ancient India. He says that they occupy an important place in the literature of the Smritis. These rights were enjoyed by ancient Indians either expressly knowing them or as comprehended in dharma or inferred from the concept of duties. Whether it is Mahabharata or Arthashastra or Manu Dharmashastra or Narada, there is great emphasis on the institution of Kingship and Raj dharma in order to escape from political disorder, social chaos and injustice. Kings were required to a pledge never too arbitrary and always to act according to *"whatever law there is and whatever is dictated by ethics and not opposed to politics"*. There was, however, a downfall of human rights in jurisprudence in post Vedic age. But with the rise of Buddhism and Jainism there was a revival of human rights jurisprudence. Influenced by the teaching of Buddha, Ashoka worked extensively for the protection of human rights. His chief concern was the happiness of his subjects. Torture and inhuman treatment of prisoners were prohibited under Ashoka's administration.

The Study of Mudra-Raksha shows that dispensation of justice considered as one of the important duties of the rulers. No leniency was shown to criminal; and the whole system worked so efficiently that **Magasthenese** say: *"Kings employed spies not only to detect violators of human rights but gathered public opinion on various important matters.* Harsha Vardhana was the last Emperor of Hindu India. He always remembered that the point of the administration was the welfare of the administered. He dedicated his entire time to advance the welfare of his kin. It is for his responsibility towards his kin that he is regularly contrasted and Akbar and Ashoka. Consequently, obviously antiquated Indian Jurisprudence remained for augmenting and empowering human flexibility, freedom and correspondence for all individuals. It has created basic standards in view of human solidarity and congruity which rises above decent varieties of race, shading, dialect, religion, and so forth.

Human Rights in Islamic Era

The idea of human rights got lost on its way oblivious and thin rear ways of the medieval times. Amid Muslim time in India, particularly in the preMughal time frame, there were arrangement of social, social and political burdens and strain on the style and lifestyle of Hindu. The Muslim rulers in India were fundamentalist and oppressive who constrained upon the Hindus their own laws, traditions and religious practices. Hindus were not treated in law comparable to Muslims-the last being the champion and the previous being the Kafirs, the non-adherents of Islam, exceptional inabilities like jazia, were forced on Hindus. Both in principle and practice, there was victimization Hindus opposite Muslims. Muslim lead in India was not established on the fundamental standards of human pride, fairness and equity, and was basically absolutist, religious and flighty, without administer of law, ethical quality, equity, resistance and social amicability. So the hugeness of Muslim govern in India from the perspective of human rights was counterproductive to amicability, equity and balance and the idea of human rights got lost on its way, in the corner of limited back streets of the medieval times. It is, nonetheless, at a later stage that Muslim state in India turned out to be significantly changed in its shape. A portion of the Mughul rulers, particularly Akbar the colossal achieved an essential change in the style of Mughul organization. He embraced an arrangement of resilience and non-segregation towards Hindus and saw that no shamefulness is conferred in his domain. His equity cherishing custom was trailed by his child Jehangir, too Akbar never utilized power to force his Din Illahi (divine religion) regarding his matters (which he could have). Indeed, Jains, Parsis, Hindus and Christians all took their offer in the basic leadership procedure of the Akbar organization. He took after the way of Sulh-I-Kul or general toleration or peace with all. Amid the rule of Aurangazeb, the idea equity was made not so much mind boggling but rather

more endeavors than in the previous rules. Defilement is legal was made a wrongdoing out of the blue. In the event that deferral in equity brought about misfortune to a gathering, the abused party could be remunerated by the judge himself. The privilege of a blamed to be discharged on safeguard existed amid Mughal manage in India. Thus the privilege to profit of uncertainty was known to Muslim law in the organization of criminal equity. The advantage of uncertainty was known as Shuba (question) which qualified a blamed for be absolved. It can't, in any case, be denied that the Aurangzeb was the most brutal, fan and oppressive ruler. He endeavored sincere endeavors to change over Kashmiri Pandits to Islam with the utilization of his legislative apparatus. The ninth Sikh Guru Teg Bahadur needed to forfeit his life, and in 1675 A.D. Master Gobind Singh (tenth Sikh Guru) needed to forfeit his four children in battling against foul play and constraint to spare Hindu from transformation.

Human Rights in British India

The modern version of human rights jurisprudence may be said to have taken birth in India at the time of British rule. Perhaps the first explicit demand for fundamental rights appeared in the Constitution of India Bill; 1895. The Bill envisaged for India a constitution guaranteeing to everyone of her citizen freedom of expression, inviolability of one's house, right to equality before law, right to property, right to personal liberty and right to free education. A series of Congress resolutions adopted between 1917 and 1919 repeated the demand for civil rights and equality of status with English men. The resolutions called for equal terms and conditions in bearing arms for a wider application of the system of trial, by jury and for the right of Indians to claim that no less than one-half the jurors should be their own countrymen. A further resolution to this effect stated the 'emphatic opinion', that parliament should pass a statute guaranteeing 'The Civil Rights of His Majesty's Indian Subjects', which would embody provisions establishing equality before the law, a free press, free speech, etc. The statute should, moreover, lay down that political power belonged to the Indian people in the same manner as to any other people or nation in the British Empire. By the mid-twenties, Congress and Indian leaders generally had achieved a new forcefulness and consciousness of their Indianness and of the needs of the people, thanks largely to the experience of World War-I, to the disappointment of the Montagu-Chelmsford Reforms, to Woodrow Wilson's support for the right of self-determination, and to Gandhi's arrival on the political scene in India. These influences reflected the tone and form of demands for the acceptance of civil rights for the Indian people. Another major development in this direction was the drafting of 'Mrs Besant's Commonwealth of India Bill of 1925'. Article 4 of this Bill contained a list of seven Fundamental Rights. The appointment of the Simon Commission by the British Government of November 8, 1927 to undertake a study of the constitutional reforms in India impelled the Indian

National Congress to set up a committee to draft a Swaraj Constitution on the basis of a declaration of rights. This resolution was passed in 1927 at the 43rd Annual Session of the Indian National Congress held in Madras. The committee called for by the Madras Congress Resolution came into being in May, 1928. Pt. Moti Lal Nehru was its Chairman, the Committee's report- known as Nehru Report. The Fundamental Rights incorporated in the Nehru Report were reminiscent of those of the American and post-war European Constitutions, and were in several cases taken word for word from the rights listed in the Commonwealth of India Bill, 1925. Another landmark in the development of the recognition of fundamental rights was the Karachi Resolution adopted by the Congress Session held in March, 1931. It held that 'in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions. The demand for a declaration of Fundamental Rights in Constitutional document was again emphasized by Raja Narendra Nath, K. T. Paul, B. Shivo Rao, Dr. B.R. Ambedkar and several other Indian leaders at the 'Round Table Conference prior to the making of Government of India Act, 1935. The Secretary of the State for India submitted a report to Parliament after the Round Table Conference was over. The report observed that the Government recognizes the importance attached by the Indian leaders to the idea of making a chapter on fundamental rights in the new Indian Constitution.

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 an "All Parties Conference in 1944-45 with Sir Tej Bahadur Sapru as its chairman. 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 and liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of the ordinary application of life.

Human Rights and the Indian Constitution

A Constitution means a document having a special legal sanctity, which sets out the frame work and the principle functions of the organs of the Government of state and declares the principles governing the operation of these organs. Constitution is a complex document and not to be construed as mere law but as the machinery by which basis are made. A constitution is a living and organic thing which, of all instruments, has the greatest claim to be construed broadly and liberally. Constitution of India is a supreme lex. The Constitution of India was drafted by the Constitution Assembly, which had its first meeting in 9th December, 1946 and finally the Constitution was adopted by the people of India on 26

November, 1949 and it came in to force w.e.f. 26 January, 1950. During this whole period the Constituent Assembly took serious note of various national as well as international developments, particularly in the area of human rights. On 10th December, 1948, when the constitution of India was in the making, the general assembly proclaimed and adopted the universal declaration of human rights, which surely influenced the framing of Indian Constitution. In fact, the Indian desire for civil and political rights was very much implicit in the formation of Indian National Congress in the year 1885. In the other words of Austin, India wanted some rights and privileges that British master enjoyed in India and that they had among themselves in England and wanted to end the discrimination of colonial regime. The first explicit demand for fundamental rights appeared in the Constitution of India Bill, 1895, which was issued under the inspiration of Lokmanya Bal Gangadhar Tilak. The demand for declaration of fundamental rights in future constitution of India gained impetus at the hands of political leaders with the passage of time. The congress resolution of 1929 also emphasized the theme of socio-economic reconstruction. After the Karachi Resolution of 1931, The Sapru Committee in its "Constitutional Proposals" recommended that a declaration of fundamental rights in the Indian Constitution was absolutely necessary. It envisaged two sets of fundamental rights, one justifiable and the other non-justifiable. It was left to the constitution framing body to make a division between them.

On 13 December 1946, Jawaharlal Nehru, moved the historic objective resolution in the constituent assembly which was adopted by it on 22 January 1947. This resolution formed the basis for the incorporation of various human rights values not only in various provisions of the constitution but also in its preamble. Nehru in his concluding speech remarked that the assembly was to free India through a new constitution, to feed the starving people and clothes the naked masses, and to give every Indian fullest opportunity to develop himself according to this capacity. Dr. S. Radha Krishnan, also emphasized that there must be a socio-economic revolution not only to satisfy the fundamental needs of a common man but to bring about a fundamental change in the structure of Indian society. Thus, it is evident that though the constituent assembly was mainly concerned with the welfare of the masses, yet there was considerable emphasis on the ameliorative role of the state. The tryst to make the India's constitution a viable instrument of Indian people's salvation, and to secure all persons basic human rights, is implicit from the preamble promise fundamental rights, directive principles and various other provisions of the constitution. Most of the articles of UDHR, 1948, and two International Covenants are building blocks of any Indian's Constitutional Rights.

Preamble

The Preamble is the basic structure of the Constitution. The preamble says that people are the ultimate authority and the constitution emerges from them. The preamble may be invoked to determine the ambit of the fundamental rights and directive principles of state policy. The Preamble contains a specified objective that is the basic structure. It is the soul of the constitution and as such is the precious part of the constitution. Preamble says that the constitution was adopted on 26th November 1949 which is observed as the Law Day though it came into force from 26th January 1950. The words of the Preamble to the Constitution of India have been taken from clauses 1, 5 and 6 of the objectives resolution. The Preamble of the constitution reads:

We, the people of India having solemnly resolved to constitute India into a (Sovereign Socialist Secular Democratic Republic) and to secure to all its 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 the individual and the (Unity and integrity of the Nation);

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

Thus, the preamble concisely sets out quintessence of human rights which represents the aspiration of the people, who have established the constitution. The Preamble to the Constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expresses in the preamble.

- The word “sovereign” means that the state has power to legislate on any subject in conformity with constitutional limitations.
- The word “socialist” was added in the preamble by the Constitution (42nd Amendment) Act 1976.
- The word “secular” was also added in the preamble by the Constitution (42nd Amendment) Act 1976.
- The term “democratic” indicates that the constitution has established a form of government which gets its authority from the will of people. It means government of the people, by the people, for the people. Justice, liberty, equality and fraternity, which are essential characteristics of a democracy, are declared in the preamble of the constitution.

The Constitution of India, to achieve the above stated objectives, has given a special place to the chapter of fundamental rights in Part-III and Directive Principles of State Policy in Part-IV of it. Fundamental Rights guarantees certain rights to the individuals, whereas, the Directive Principles gives direction to the State to provide some other rights to its people in specified matters. These together constitute the conscience of the Constitution. These rights also have conformity with the Universal Declaration of Human Rights, the international covenant on civil and political rights and covenant on economic, social and cultural rights due to the fact that India had voted for the declaration and ratified the covenants. Hence, it becomes the "duty of India to provide these rights to all of us which are enshrined in these international instruments."

Fundamental Rights

The fundamental rights are guaranteed in Part-III of the Indian Constitution consisting of articles 12 to 35. Since these rights are a guarantee against "State Action", they have to be distinguished from violation of such rights by the private parties. Private action is protected by ordinary Law of the land

Article 12 defines the expression "State" as under: **Article 12 Definition:** In this part, unless the context require, "the state" includes the Government and Parliament of India and the Government and the Legislature of each of the states and all local or other authorities within the territory of India or under the control of the Government of India. The Supreme Court of India has further expanded the scope of the expression "State" by holding that any agency or instrumentality of the government will also be covered in the expression "other authorities" under Article 12 of the Constitution. The Supreme Court has held that with the changing role of the state from merely being a police state to a welfare state it is necessary to widen the scope. Article 13 makes any law inconsistent with or in delegation of the fundamental rights as void to the extent of inconsistency. In this regard it is relevant to note that the language of Article 13(2) which provides: The state shall not "make any law which takes away the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void; In fact, this clause provides 'judicial review' of all legislations in India. The main object of Article 13 is to secure the paramountcy of the Constitution in regard to fundamental rights which represent the basic human rights of the people. However, article 13 does not apply to the constitutional amendment and the validity of the constitutional amendment cannot be challenged under Article 13. But any constitutional amendment which violates the basic structure of the constitution can be challenged.

Conclusion

The above analysis of comparative study of various provisions of the Indian Constitution, the Universal Declarations of Human Rights, 1948 and the two Covenants on Human Rights, 1966, are indicative of the fact that in India many rights provided in the Universal Declaration of Human Rights and the Covenant on Civil and Political Rights are available to a person because these rights are enumerated in Part III of the Constitution as Fundamental Rights which are enforceable by the Courts and the Courts are bound to declare as void any law which is inconsistent with any of the Fundamental Rights. However, economic and social rights have placed under Part IV 'Directive Principles of State Policy' which are not justiciable. Therefore, these rights have not been adequately protected in India due to their non-enforceable character. Overall application of international law of human rights in the Indian Constitution is encouraging inspite of reservations made by India to the application of the Covenants in the Indian Legal System.

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