

Human Rights in India: Historical Perspective

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Introduction

The history of human rights is contemporaneous to the development and evolution of early man. The concept of human rights as it is understood today has evolved over the centuries. Though the expression "Human Rights" seems to have modern face, human rights are as old as human civilization. Human rights have existed in however, nascent a form, ever since man, as a gregarious animal, has lived in communities, family, clan, tribe village, town or nation and now in an independent world community.¹³ Looking at the concept of human rights from a historical perspective, it would be seen that it is neither entirely western nor so modern, rather it is the crystallization of values that are common heritage of mankind.

Kautilya in his famous and immortal work "Arthashastra" has defined and described the human rights of war prisoners. The human rights were reformed to as civil rights, political rights, personal rights, legal rights, natural or divine rights, economic and social rights in ancient period. Hence, there is a variety of expression, like 'inherent rights', 'natural rights', 'inalienable rights', 'basic fundamental rights', which are interchangeable terms to express the rights that a human being possess.

While introducing the concept of human rights a well-known scholar says, "Human rights are twentieth century name or what has been traditionally known as natural rights or in more exhilarating phrase, the rights of man."¹⁴ The concept of human rights was first, reflected in ancient Greece and Rome, where it was closely tied to Pre-modern natural law doctrine of Greek stoicism. The Greek idea of divine law and freedom and the practice of Roman law are at the heart of today's ideas of human rights. During the 18th Century, the so called Age of Enlightenment, a growing confidence of human reason and of course, the perfection of human affairs led it to become more comprehensive one. John Locke in England, Montesquieu Voltaire and Jean Jacques Rousseau in France and others supported human reason and also tried to prove the superiority of natural law.

The doctrine of natural rights influenced the English, French and American Revolutions. The practical examples of England glorious revolution 1688 and resulting Bill of Rights on 1689 as well provided rationale for the wave of revolutionary agitation which influenced the West, most notably in North America and France. Certain historic texts like Pennsylvania Declaration (1776) American Declaration (1787) French Declaration (1789) reflected the intellectual milieu of the contemporary socio-political situations spawning the struggle against political absolutism. In the words of Maurice Cranston, a leading human rights scholar, it is evident that these struggles took place because the absolutism promoted men to claim their rights which were denied to them. All those revolutions laid the foundation of human rights. In fact, Henry David Thoreau was first philosopher to have used the term "human rights" in his treatise; civil disobedience, which influenced Leo Tolstoy, Mahatma Gandhi and Martin Luther King to develop and propagate the concept of non-violent resistance to unethical governmental actions. Mahatma Gandhi said: "respect of one, equally applies to the whole universe. All mankind in essence are alike, what is therefore possible for one is possible for everybody."

The horrors of the Second World War led to the birth and recognition of the modern human rights movement in the international sphere. President Roosevelt's proclamation in 1941 the four freedoms of speech and expression, of belief, freedom from fear and want- as universally acceptable set of standards, along with the works of NGO's were some of the significant developments in this directions. But it was the establishment of the United Nations in 1945, and the subsequent international concern for the commitment of human rights that widened the scope of this movement. A cornerstone of this post war human rights regime was the Universal Declaration of Human Rights (UDHR) which was adopted on 10th December, 1948, which is commonly known as "Human Rights Day". The sources of this Declaration owe much to the English

Revolution, American Revolution, and French Revolution. The post-war era heralded the adoption of equality, liberty and social justice as the cardinal principles of human rights. The first documentary use of the expression of human rights took place in UDHR and two other international covenants - International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 which came into force in 1976 with the consent and approval of the United Nations.

Global recognition for the human rights movement grew during the 1970s, when Amnesty International gained permanent observer status as an NGO at the United Nations. Its reports and Statement, and press releases about basic human rights received respectful attention around the world. The U.N. Declaration 1948 caught the attention of civil society organization and Individuals in the third world to fight precious rights. Hence numerous civil society organization (Human Rights Watch, Amenity International) emerged in Asia, Africa and Latin America fighting against oppressive State and basic human rights; be it the right to life, right to free expression, right to work & better working condition and host of similar rights. At last we can say, Amnesty and many of its sister organizations inspired a shape the later course of civil liberties movements all over the world. The Amnesty International was awarded Nobel Peace Prize for its contribution to the cause of human rights.

Thus the historical perspective highlighted the realities of man's struggle for rights being as old as the history of mankind itself. The concept of human rights was in a rudimentary form in the ancient times, in formative stage in middle ages and had fully grown in the 20th Century with the formation of United Nations.

The U.N. Charter, however, was not a binding instrument, and merely stated the ideal which was to be later developed by different agencies and organs. The first concrete step by way of formulating the various human rights was taken by the U.N. General Assembly in December, 1948, by adopting the Universal Declaration of Human Rights. It was intended to be followed by an International Bill of Rights which could be legally binding on the Covenanting Parties. After all, Universal Declaration operated merely as a Statement of ideals which was not of the nature of a legally binding covenant and had no machinery for its enforcement. That deficiency was sought to be removed by the U.N. General Assembly by adopting in December, 1966, two Covenants for the observance of human rights:

1. The Covenant on Civil and Political rights.
2. The Covenant on Economic, Social and Cultural Rights.

Indian Perspective on Human Rights

If we look at the concept of human rights from Indian point of view we find that the concept of human rights is not alien to the Indian Political thinkers and philosophers. They have expressed concern to secure human rights and fundamental freedoms for all human beings everywhere since the very early times of Vedic age. The Indian philosophy characterizes the foundation of Human rights in ancient conception of Dharma and Danda which regulated the governance of State and its citizens. The Concept of Sanatan Dharma which laid down the foundation of human rights in ancient civilization is 2000 years older than western Christianity with a central theoretical doctrine. It laid down the foundation of same society in ancient Indian civilization encompassing a moral code, righteousness and responsibilities. It was certainly wider and broader than the concept of religion as used in western historiography. It was on the basis of those existing principles that detailed rules were laid down for the guidance, of the King. It was his duty to uphold the law and he was as much subject to law as any other person (equality before law and equal protection of law can be deduced from that practice). One of his chief duties was the administration of justice according to the laws of religious texts, local customs and usages and written codes. It was obligatory for him to enforce not only the sacred laws of the existing texts but also the customary laws (rights and claims) of the subjects. There was possibly the human rights enforcement situation in its embryonic stage. The guiding principles for the kings were taken mainly from species of dharmic texts like Vedas and Vedanta under thegenus, SanatanDharam which exnshrines „Truth is one" and God resides in every human being.' Upanishads, emphasizing the individual self and its truth say that "there is nothing high than the person". Mahabharata also emphasises the point that "without ethical and moral principles, there is no true happiness and a society cannot hold together; the principles such as truth, self-control asceticism, generosity, non-violence constancy in virtue should serve as the means of one's success."

However, even at the individual"s level, there were some significant contributions by the religious prophets with regard to the basis of human rights. Mahavir, the founder of Jainism said that the foundation of human freedom in its deepest sense, advocated that the truth known as Anekantavad which demonstrated the idea

of the relative pluralism and many sides of truth. This attitude towards truth gives profound implications for various aspects of human life- personal and social.

During the Chandra Gupta Maurya's regime, Kautilya in his Arthashastra, which depicted political, social economic Codes of Conduct, laid down certain principles of the law of punishment as the foundation of social existence. These principles then became the basis of law against, interalia, illegal arrests and detention, custodial death, ill-treatment of women such as rape, inequality of gender, corrupt judicial system etc. The legendary King Ashoka in the post-Kalinga regime had sown the seeds of a humanitarian society and made various provision to ensure equality, fraternity and happiness for all his subjects. In a way Ashoka was the most important architect of civil liberties in Ancient India.

The modern version of human rights jurisprudence took a firm root during the British rule in India. While the human rights struggle were mainly against the exploitative and oppressive rule by colonial power the movement was meant to restore the lost Dharma of glorious past through internal reforms of Indian Society. When the religious bias was introduced to the judicial system in India by Britishers (British Rule) by the Act 1827, Raja Ram Mohan Roy "The great social reformer of Modern India" opposed the provisions of that Act. The provisions of the Act were that natives, either Hindus or Muslims, are subject to judicial trial by Christians, either European or native, while Christians are exempted from being tried either by a Hindu or Muslim juror". His foresighting thought and meaningful actions made a valuable contribution to improve the civil liberties of the native of that time. The reformist movement of human rights and dignity from Bengal slowly but spread steadily, over to other parts of India. For instance, In Maharashtra, MahadevGovindRanade, who was one of the founding members of Indian National Congress, set up an all India Organizations, the Indian Social Conference in 1887, to campaign against human rights abuses. Ranade was such a visionary that he could be able to see the interdependence and indivisibility of what is now known as two generations of human rights - civil and Political right, and economic social and cultural rights. He made a very passionate plea that "you cannot have a good social system when you find yourself low in the scale of political rights nor can you be fit to exercise political rights and privileges, unless your social system is based on reason and justice. You cannot have a good economic system when your social arrangements are imperfect. If your religious ideas are low and grounding, you cannot succeed in the social, economic and political spheres. This interdependence is not an accident but is the law of nature." finally found its expression in the provisions of Universal Declaration of Human Rights in 1948.

Constitutional & Conventional Contours of Human Rights

The Constitutional Assembly accomplished the Herculean task of drafting the Constitution which was enacted and adopted by the People of India on 26 January, 1950. The genesis of the vision, need recognition, protection and enforcement of human rights which lies in the freedom struggle of Indians for more than a century, culminated in the form of Fundamental Rights and Directive Principles of State Policy in which mammoth structure of Indian Republic stands today. The aspirations of the people of India found expression in the Indian Constitution which enacted a nearly complete catalogue of human rights around the time when international scene was witnessing the framing of UniversalDeclaration of Human Rights. The human rights content of the Indian Constitution is a complex amalgam of Civil and Political Rights along with the economic social, religious and minority rights.

Even prior to the framing of the Constitution for free India, Mahatma Gandhi had announced before the Second Round Table Conference that his aim was to establish a political society in India in which there would be no distinction between high class and low class people, that women should enjoy the same rights as men; and dignity and justice, social, economic and political, would be ensured to the teeming millions of India.

The Preamble, Fundamental Rights, Directive Principles of State Policy is important Constitutional provisions from the human rights point of view. Now the concept of human rights is no longer a philosophical conception, it has become a functional reality. The study of human rights with reference to Indian Constitution reveals that the Constitution enshrines almost all the human rights provided in the various international Conventions, Covenants and treaties, such as Universal Declaration of the Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966, the International Covenant on Economic Social and Cultural Rights, 1966 etc. The rights guaranteed and provided in the Constitution of India are required to be in conformity with the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights in view of the fact that India has become a part to these Covenants by ratifying them. Many rights enshrined in the Covenants on Civil and Political Rights have been recognized

specifically in the Indian Constitution as Fundamental Rights under Part III and made them justiciable i.e., judicially enforceable fundamental rights while Rights stipulated in the Covenant Economic, Social and Cultural Rights are enshrined in part IV of the Constitution which lay down the Directive Principles of State Policy and made them non-justiciable (judicially non-enforceable rights).

Civil, Political Rights and Fundamental Rights

The rights cherished in the Covenant on Civil and Political Rights have been duly protected under part III of the Indian Constitution as Fundamental Rights. These rights include right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, and right to Constitutional remedies.

It is very important to mention here that our Constitution makers having incorporated a long list of fundamental rights have also provided effective remedies for the enforcement of these rights. Articles 32 and 226 of the Constitution of India have adequate provisions for the enforcement of fundamental as well as other rights of the individuals by way of orders, directions and various writs such Habeas Corpus, Mandamus, Certiorari, Prohibition and Quo Warranto. The Supreme Court as well as State High Courts exercises their power under the head of „the right to Constitutional remedies“ in case of violations of the above mentioned fundamental rights. In this way these Articles are novel provisions in the Constitution of India and have no parallel in the Constitution of any other country.

In *Maneka Gandhi v. Union of India*, Bhagwati J. has said that the expression personal liberty in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute personal liberty of man and they have raised to the status of distinct fundamental rights. In *Unni Krishnan J.P. v State of Andhra Pradesh*, the Supreme Court held that „personal liberty takes all the rights of man“ Hence it has the widest ambit and scope and is co-extensive of Article 21 which includes both substantive right to personal liberty and procedural safeguard to be observed for its deprivation. Again, the Supreme Court in *S.R. Bommai v. Union of India* case had held that Preamble of the Constitution is an integral part of the Constitution. Hence „personal liberty“ guaranteed under Article 21 must be interpreted in the light of personal liberty and dignity promised in the Preamble. The Convention and the Constitution stand on equal footing for the protection and promotion of these basic and fundamental rights. No narration of the Constitution in the last sixty three years can be complete without reference to *A.K. Gopalan*, *Maneka Gandhi*, *Golaknath* and *Kesavananda Bharti* cases. The doctrine that the basic Structure of the Constitution cannot be altered by amendment is a fundamental original doctrine evolved by the Indian Judiciary. It is a singular contribution made by the court for the protection of human rights in this country.

Human Rights and Directive Principles of State Policy

In India much importance has been given to civil and political rights but not economic and social rights. However, in real sense the realization of the civil and political rights is impossible without the enjoyment of economic rights. P.N. Bhagwati, J. rightly said that civil and political rights become a practical reality for the people of the State only on the achievement of economic and social rights. Thus the Economic and social rights are the medium to achieve civil and political rights. Otherwise civil and political rights will remain merely a leasing illusion and a simple promise. The rights postulated under the International Covenant on Economic and Social Rights are incorporated in the Directive Principles of State Policy under part IV of the Constitution of India. Though Part IV contain directives to the State, it is intended to guarantee certain basic economic and social rights to the citizens by the State.

Judicially non-enforceable rights in part IV of the Constitution are chiefly those economic and social in character. However, Article 37 makes it clear; their judicial non-enforceability 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.

The idealism of the makers of our Constitution is proclaimed in the Preamble which aims at creating a country where just social, economic and political will prevail, where there will be liberty of thought, expression belief, faith and worship; equality of status and of opportunity and fraternity assuring the dignity of the individual. Part III gives a practical shape to this vision by safeguarding the human rights and the civil and political values proclaimed in the Preamble through justiciable fundamental rights. Economic and social rights which require policy initiatives from the State for their realisation are part of the Directive Principle of State policy.

If we examine the functioning of the Constitution in the last 63 years in the area of human rights, we find that the human rights jurisprudence has also been deeply influenced in interpreting these two parts of the Constitution by the international human rights norms set out by the United Nations in the Universal Declaration of Human Rights in 1948 and other international Covenants, treaties and conventions. These human rights and freedoms which we enjoy under the Constitution form the very essence of the civilized life of a person. Knowing how fragile and nascent this freedom is, we have to be constantly vigilant to see that our Constitutional structure is not eroded and we are ever vigilant to protect our freedoms and our basic human rights. The spirit of liberty is an eternal flame which we must keep burning with every means at our command if we are going to create the kind of social, economic and political structure that was envisaged by our founding fathers.

Human Rights of Accused: International Charter, Covenants and Convention

In order to provide certain basic rights to an accused person for the purposes of restoring the dignity of a human being and protecting him from inhuman behaviour when he is taken into custody, the following two important and noteworthy declarations were made at international level:

- (1) Universal Declaration of Human Rights, 1948,
- (2) International Covenant on Civil and Political Rights 1966.

In addition to above mentioned declarations, several other International instruments were made at different levels from time to time which substantiated and strengthened the basic principles laid down by these two documents. Out of these following are noteworthy:

- (1) United Nations Standard Minimum Rules for the treatment of Prisoners, 1955
- (2) European Convention on Human Rights and Fundamental Freedoms, 1950
- (3) American Convention of Human Rights, 1969
- (4) African Charter on Human and Peoples Rights, 1981
- (5) Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

Conclusion

The Human rights as a construction that allows us to recognize the practical importance of law, reason and social fact in bringing economic and social rights into reality. It is the interchangeability of constitutional and human rights, in light of their normative emphasis on individual freedom and dignity, and their shared conceptual treatment of the state. It also suggests that extensive links between international human rights and constitutional rights are established through trans judicial dialogue, borrowing, common structures of reasoning and interpretation, and transnational movements. It argues that norm divergence, and democratic concerns are not sufficient to warrant a separate analysis. This chapter also notes the areas of private law that demand further attention in light of economic and social rights.

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