

Human Rights in India and Judicial Trends: A Step Towards Social Justice

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Abstract

With the democracy having been adopted as the only acceptable form of Government in the world and its roots having deepened on the soil and in the minds of the people, the human rights have become a way of life and an essential part of human living. We the Indians take pride in belonging to the largest democracy on the globe with a rich culture and the fact that Indian Constitution was drafted when the Universal Declaration of Human rights was drafted and adopted. Accordingly we do note with satisfaction that our Constitution and other statutes taking source and strength from it contain all the important provisions of human rights demanded to be there by the international conventions and other documents on the subject¹.

I. REMOVING EVERY TEAR FROM EVERY EYE: THE CHERISHED GOAL

The goal of our democracy, if it is to be summed up in a sentence, is to recall the father of the nation and his most pregnant words uttered at the dawn of independence: to wipe every tear from every Indian eye'. This goal has often been reminded and reiterated not only by our rulers starting with the visionary first prime minister, Pt. Jawaharlal Nehru but also by our law makers and other agencies working for the accelerated development of our country. It is for this reason that our judiciary, as the watchdog of our democracy, has also reminded our governments of this

Cherished goal set forth by the founding fathers of our constitution and the architects of our democracy, The Supreme court of India underscored this objective in *Som Parkash Rekhi v. Union of India* and other some 20 years back in the following words:

Jawahar Lal Nehru warned the constituent Assembly about the problem of poverty and social change. 'The service of India means the service of millions who suffer. It means the ending of poverty and ignorance and disease and inequality of opportunity. The ambition of the greatest man of our generation has been to wipe every tear from every eye. That may be beyond us, but as long as there are tears and suffering, so long our work will not be over.'¹

The concept of human rights has assumed great significance globally during the recent past and it has become a matter of serious concern all over the globe in the present day to day life. In all the societies irrespective of social – political – economic – ethnic – ideological disparities and differences, it has been observed that people treat each other depending upon their motivation may be of love, gratitude, hatred greed etc. Human beings display certain needs which must be satisfied if they have to survive, grow and develop their pretensions as well as for the development of the society. These basic needs have been incorporated in almost all the national constitutions which contain catalogues of human rights and basic fundamental freedoms.

Human rights are no doubt the inherent rights of a man, without which one cannot live with dignity. During the ancient and medieval period, the concept of human rights was unknown

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Though the concept of human rights is very old it assumed great importance only after the Second World War. The aftermath of the Second World War witnessed tremendous concern for humanity. As a result great progress was made in the field of human rights The Universal Declaration of Human Rights which was adopted by the UN General Assembly on 10th Dec. 1948, has been proclaimed "as a common standard of achievement for all people and all nations". It incorporates not only the traditional Civil Liberties but also Social, Economic and Cultural Rights. Together with it, the two international human instruments, namely, the International Covenant on Civil and Political Rights, 1966, and The International Covenant on Economic, Social and Cultural Rights, 1966, have been wide connotation to the concept of human right.¹

The preamble of the Declaration adumbrates the concept of these rights in the world:

"Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of making, and advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people. Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

Whereas it is essential to promote the development of friendly relations between the national.

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, whereas member states have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for the observance of human rights and fundamental freedoms, whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

Though the Universal Declaration of Human rights was adopted towards the close of 1948 and the ball was set rolling for more international covenants and national efforts to integrate them in their own laws but the concept of these rights is as old as human civilization. The concept of democratic governance by a limited sovereign given by Locke ² and the Magna Carta of England ³ are accepted to have provided substances to these rights. As such, the human rights may be called as the rights which are inherent in nature and without which we cannot live as human beings because such rights and freedoms allow us to fully develop and grow congenial atmosphere.

The Indian constitution was drafted in 1949 at a time when deliberations for the Universal Declaration were in the air. Therefore, the framers of the Indian Constitution were influenced by the concept of human rights it had already guaranteed most of the human rights which later came to be embodied in the International covenants 1966.

It is satisfying to note that all the above mentioned rights are provided in the Covenants and are also guaranteed to the India poor under the constitution.

We can make a brief mention of these rights and their provisions:

- (i) Rights to equality and non-discrimination.
- (ii) Right to life and personal liberty.
- (iii) Right against arbitrary arrest.

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- (iv) Right against self – incrimination.
- (v) Freedom of Movement.
- (vi) Freedom of thought and expression.
- (vii) Right to assemble peacefully.
- (viii) Right to form association.
- (ix) Right to Property.
- (x) Right against slavery.
- (xi) Equal access to public services.
- (xii) Right to take part in public affairs.
- (xiii) Right to growth during childhood.
- (xiv) Right to get human rights enforced.
- (xv) Equality before law.

From the above references of the provisions in the International documents adumbrating the human rights to the member of civilized societies and the rights outlined in the constitution of India, we feel very much satisfied that all the essential rights of the poor persons that help them feel equal members of the democratic society and those required for their proper growth and development are available to them in the Indian setup.

The latest judicial trend reveals the India courts are quite enthusiastic in using in the law as a tool of social revolution.

What is being realized is that the process of social change through law involves not only the legislature but law courts also interact and react thorough interpretative device.

That is why judiciary successfully hammers out Human Rights jurisprudence in the light of the philosophy envisaged in our National charter. It is perhaps with this philosophy in mind that courts in India have been endeavouring to shield the cause of the poor and wage war against the plight condition of prisoners.¹, destitute women², bonded labour³, agricultural and industrial labour⁴, etc. Public Interest Litigation⁵ strategies are showing signs of warming up and shaping legal ideology in consonance with the philosophy of Human Rights.

Chief justice Bhagwati has rightly observed that the Courts in India should not be guided by any verbal or formalistic canons of Construction but by the paramount object and purpose for which this constitution has been enacted⁶. He too has made law as a tool of social transformation for creating a new social order imbued with social justice. He made a prophetic observation which has inspired the poor, the weak and the destitute to seek protection of the court against exploitation, injustice and tyranny. Chief justice Bhagwati highlighted the new-swing and significance of judicial process in these words.⁸

“Today a vast revolution is taking place in the judicial process, the theatre of the law is fast changing and the problems of the poor are coming to the forefront. The Court has to innovate new methods and devise new strategies for the purpose of providing access to the justice to large masses of the people who are denied their basic human rights and to whom, freedom and liberty has no meaning”

II. HUMAN RIGHTS JURISPRUDENCE AND PUBLIC INTEREST LITIGATION

The concept of “Public Interest Litigation” is of recent origin. It originated in the United States in 1965 while in England it began during the years of Lord Denning in 1970’s It was, however, adopted in India in 1981 when justice Krishan Iyer delivered some epoch-making judgments in Public Interest Litigation cases¹. Justice Iyer defied the term “PIL” as a process of obtaining justice for the people, of voicing

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people's grievances through the legal process. The aim is to give to the common people of this country access to the Courts to obtain legal redress.² Keeping in view the constitutional commitment towards human rights the courts in India have developed Public Interest Litigation as a dynamic Instrument by lowering the threshold levels of locus-standi. The traditional view of locus-standi that only an 'aggrieved person' who had personally suffered a legal injury by reason of violation of his rights or legally protected interests could file a suit for the redress of his grievance is now being liberally interpreted to allow standing to any pro bono public.³

Now the rule of locus-standi has been made broad based the people-oriented to allow access to justice through class actions.¹ The very idea to relax traditional rule of locus-standi is that justice becomes available to the lowly and lost.² A plethora of judicial decisions reveal that Courts in India have always given a patient hearing to the cause of the poor whose rights had been at stake and earnestly upheld the philosophy of human rights jurisprudence envisaged in our constitution.

III. RIGHT TO LIVE WITH HUMAN DIGNITY

Human rights are part and parcel of Human dignity which is adequately secured by various provisions³ of the constitution of India. The importance of the concept of Human dignity is well exemplified by its inclusion in the National and International basic legal texts.⁴ The Preamble to the constitution of India assures among other things "dignity of the individual". The Supreme Court has further expanded the scope of 'right to life' by saying that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily would be within the inhibition of Art. 21. Justice Bhagwati J. Said : "We think that right to life includes the rights to live with human dignity and all that goes along with it, namely, the basic necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human being.

To be true, man cannot enjoy his life unless he is treated as a human being and not as a commodity. Human dignity is the basic factor amongst human-rights, without which all human rights are without sense. It is with this philosophy in mind that judiciary has shown its deep concern for such people. Through judicial activism it has given new contents and meaning to letter of law. The Supreme Court has held that the right to live with human dignity is the fundamental right of every citizen and the state is under duty to provide at least minimum conditions ensuring Human right dignity.

IV. RIGHT TO LIVELIHOOD

Again in Delhi Transport Corporation v. D.T.C. Majdoor Congress,² the above principal was reiterated by the Supreme Court. In this case the Supreme Court considered the case of the employees of the Delhi Transport Corporation who were being deprived of the employment. Such employment was taken to be right to livelihood of those persons. In this case also deprivation of their employment would have resulted in threat to their very existence.

V. RIGHT TO SHELTER

The right to shelter is one of the principal rights the constitute the entire spectrum of Human rights jurisprudence. The apex court has given wider coverage³ to the philosophy of right to shelter under the constitution of India. Similarly, in Prabhakaran Nair v. state of Tamil Nadu⁴ the then justice Mukherjee after emphasizing the urgent necessity of having a National Housing Policy went to the extent of saying "right to, shelter is one of the fundamental rights."

Right to shelter, therefore includes adequate living place, safe and decent structure, clean and decent surrounding, sufficient light, pure air and water, electricity, sanitation and other civil amenities like roads, etc. so as to have easy access to his daily avocation. The right to shelter therefore, does not mean a mere right to a roof over one's head but right to all the infrastructure necessary to enable them to live and develop as a human being.

VI. RIGHT TO PRIVACY

Right to privacy – synonymous with right to be left alone is becoming heart beat of Human Rights movement both at National and International level. A question arose for the first time in *Kharak Singh v. State of U.P.*, whether right to privacy was included in the right to personal liberty. The issue involved in the instant case ¹ was whether the 'Surveillance' of the petitioner under U.P. Police Regulations amounts to infringement of Fundamental Rights. The Supreme court after referring to the views of American judges on privacy and also to its fourth and fifth confer any right to privacy, but recognised that an unauthorized intrusion into person's home and disturbance caused to him thereby is as it were the violation of common law rights of man an ultimate essential ordered liberty, if not of the very concept of civilization.

In a very recent case, ² the Supreme Court again got an opportunity to express its opinion on the question whether right to privacy was implicit in Article 21. Resolving the existing controversy, the court unequivocally held that right to privacy was implicit in Article 21.

According to it, a citizen has right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education among other matters.

VII. RIGHT TO HEALTH AND MEDICAL ASSISTANCE

The Courts in India are showing keen interest in protecting the health of the people in the society. The judiciary has accepted it in clear-cut manner that administrative as well as judicial wings of this state are under a duty not to adopt an indifferent attitude in this respect. ¹ In *D.S. Nakara v. Union of India*, ² the court held that, Then comes the old-age in the life of every man, be he monarch, or a Mahatma, a worker or a pariah. The old-age overtakes each one, death being the fulfillment of life providing freedom from bondage. But here socialism aims at providing an economic security to those who have rendered unto society what they were capable of doing when they were fully equipped with their mental and physical prowess. In the fall of life the state shall ensure to the citizen a reasonably decent standard of life, medical aid, freedom from want, freedom from fear and the enjoyable leisure, relieving boredom and the humility of dependence in old-age.

The Supreme Court of India through its verdict handed down in *Parmanand Katara v. Union of India*. ³ It has been held by the Supreme Court that it was not only moral but legal duty of the doctors of state hospitals to immediately attend to a patient without waiting for the police to come. If the doctors refuse to provide treatment, it will amount to violation of fundamental Right to life guaranteed under Article 21 of the constitution.

VIII. RIGHT TO HEALTHY ENVIRONMENT

The uniqueness of Indian Constitution lies in the fact that it reflects the Human Right approach to environment protection through various constitutional mandates. ¹ The constitution of India obligates the state as well as the citizens to protect and improve the environment. Article 21 of the constitution guarantees a fundamental Right to be lived in a proper environment, free of danger disease and infections.

The Supreme Court of India has entertained writ petitions under Art. 32 regarding the environmental

issues and ordered the closure of stone quarries on the ground that their operation was upsetting the ecological balance.² The uniqueness of judicial approach lies in the fact that it has endeavoured to read Art 48-A into Art. 21 of the constitution and regarded the right to live in healthy environment as a part of life and personal liberty of the people.

In a significant judgment in *India Council of Enviro-legal Action v. Union of India*,³ the Supreme Court has held that if by the action of private corporate bodies a person's Fundamental Rights is violated the Supreme Court would not accept the argument that it is not 'state' within the meaning of Art. 12 and therefore, action cannot be taken against it. If the court finds that Government or authorities concerned have not taken action required of them by law and this has resulted in violation of right to life of citizens, it will be the duty of the court to intervene. Therefore the Supreme Court held that writ was maintainable and directed the authorities concerned to perform their statutory duties under various Acts.

Environmental (Protection) Act, 1986, Water Prevention and Control of Pollution Act, 1974, Air (prevention and Control of Pollution) Act 1981 and Hazardous Wastes (Management and Handling) Rules, 1989

The foregoing discussion reveals that judiciary in India is playing a significant role in protecting Human Rights of the people. The latest trend available depicts that Courts are using law as tool of social revolution. India judges have started interpreting law in its contextual and social setting. They are now no longer being guided by any formalistic signs of construction. What is evident from judicial approach is that the apex Court is using law as a tool of social transformation for creating a new social order imbued with social justice.

The entire traditional philosophy of self-incrimination jurisprudence has undergone a vast change because of judicial endeavour. The scope of Art. 21 of the Constitution has been widened in the light of changing values of Indian society. The new interpretation of Art 21 has brought about a vital change in the field of Human Rights jurisprudence. All this ultimately enables us to conclude that Indian judiciary has endeavoured hard to uphold the spirit of Universal Declaration of Human Rights, 1948, International covenant on Economic, Social and cultural Rights, 1966 thereby achieved a tremendous success in resurrecting the Human Rights Jurisprudence.

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6. Magna carat was adopted in England in the year 1215.
7. Article 1 of the covenant on civil and political Rights and Articles 14,15 and 16 of the continuation of India.
8. Articles 6 and 9 of covenant and Article 21 of the constitution.
9. Article 9 of covenant and Articles 22 of the Constitution.
10. Article 14 of covenant and Articles 20 of constitution.

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11. Article 12 of covenant and Articles 19 of the constitution.
12. Article 18 of covenant and Articles 19 of the constitution.
13. Article 22 of covenant and Articles 19 of the constitution.
14. Article 23(3) of the Declaration and Article 19 of the constitution.
15. Article 17 of the Declaration and Article 300-A read with 19 (i) (g) of constitution.
16. Article 8 of the covenant and Article 23 of the constitution.
17. Article 21 of Declaration and Arts. 15,16 and 23 of constitution.
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33. Ibid
34. For detail see constitution of India. The preamble, Articles 21, 39 (e) and (f), 41 and 42.
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48. (1996) 3 SCC 212; see also Vellore citizen welfare forum v. union of India (1996) 5 SCC 647.