

A Perspective Study of Human Rights in India from Ancient to Modern Era

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Abstract

Human rights refer to the basic rights that are believed to be entitled to every human-being. Every human-being are entitled to certain rights and freedom irrespective of their origin, ethnicity, race, colour, nationality, citizenship, sex or religion. These rights are considered universal for humanity.

Human beings are born equal in dignity and rights. These moral claims are articulated and formulated in what is today known as human rights. We are all equally entitled to our human rights without discrimination. The origin of human rights may be found both in Greek philosophy and the various world religions. In the Age of Enlightenment the concept of human rights emerged as an explicit category. Origin of the idea of human rights in India though the Rigveda Period. The term Human Rights refer to those rights are considered universal to humanity, regardless of citizenship, residency status, ethnicity, gender, or other considerations. The present topic is a burning issue and has a great significance in the world especially the developing nations like India.

Through this research paper I want to discuss about the concept of human right in India it also includes the tradition and origin of Human rights from ancient to modern India.

This paper is based upon secondary source of data such as Books, article, newspaper, web sources etc.

Keywords: Human Rights, National Human Rights Commission, Discrimination, Human Values, Education, Fundamental rights, Constitution

I. Introduction

Since the days of the Indus Valley Civilization, Indian culture has been the product of a synthesis of diverse cultures and religions that came into contact with the enormous Indian sub-continent over a very long stretch of time. As Jawaharlal Nehru wrote, there is "an unbroken continuity between the moose: modern and the most ancient phases of Hindu thought extending over- three thousand years."¹ The rights of man have been the concern of all civilizations from time immemorial. "The concept of the rights of man and other fundamental rights was not unknown to the people of earlier periods."² The Babylonian Laws and the Assyrian laws in the Middle East, the "Dharma" of the Vedic period in India and the jurisprudence of Lao-Tze and Confucius in China, have championed human rights throughout the history of human civilization. The Indian concept perceives the individual, the society and the universe as an organic whole,. Everyone is a child of God and all fellow beings are related to one another and belong to a universal family. In this context, Mahatma Gandhi remarks, "I do not want to think in terms of the whole world. My patriotism includes the good of mankind in general. Therefore my service to India includes the services of humanity."³

II. Concept of Human Rights

Human rights are the rights a person has simply because he or she is a human being. Human rights are held by all persons equally, universally, and forever. "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."⁴ Kant said that human beings have an intrinsic value absent in inanimate objects. To violate a human right would therefore be a failure to recognize the worth of human life.⁵ Human right is a concept that has been constantly evolving throughout human history. They have been intricately tied to the laws, customs and religions throughout the ages. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have them do unto you." The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address questions of people's duties, rights, and responsibilities. Human rights being a generic term embrace civil rights, civil liberties, social, economic and cultural rights. It is therefore difficult to give a precise

¹ Jawaharlal Nehru. *The Discovery of India*, 2nd ed. 88 (New Delhi. Jawaharlal Nehru Memorial Fund, 1992).

² Attar Chand, *Politics of Human Rights and Civil Liberties - A Global Survey* 45 (Delhi: UDH Publishers, 1985).

³ Jawaharlal Nehru 420

⁴ Article 1 of the United Nations Universal Declaration of Human Rights (UDHR)

⁵ A. I. Melden, *Rights and Persons* 189 (Berkeley: University of California Press, 1977).

definition of the term Human Rights. As such, it can be said that the rights that all people have by virtue of human existence are human rights. Since these rights belonged to them because of their very existence, they become operative with their birth. Human Rights being the birth right are therefore, inherent in all the individuals, Irrespective of their caste, creed, religion, sex, nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare, they are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings; Human Rights are also sometimes referred to fundamental rights, basic rights inherent rights, natural rights and birth rights⁶. The roots for the protection of the rights of a man may be traced as far back as in the Babylonian Laws.⁷

III. Origin and Development

The history of Human Rights, in fact, to the times immemorial, however gained impacts only in recent times. It has formally and universally became recognized only after the formation of 1945, which has, as its central concern, reaffirmed its faith in fundamental Human Rights, in the dignity and worth of human rights at all levels under any circumstances. The term Human Rights virtually denotes all those rights which are inherent in our nature and without which we cannot live as human beings⁸. Human rights which are essentially individual in character, for they are meant to be enjoyed by individuals constitute a social phenomenon by virtue of those for whom they are intended⁹. The history of origin and development of Human Rights is very fascinating. The origin of human is traced by some Scholars back to the times of ancient Greeks. The fact that human rights were recognized as natural rights of man is illustrated by a Greek play Antigone¹⁰. Though, the roots for the protection of the rights of man may be traced as far back as in the Babylonian laws. Assyrian laws, Hittite laws and in the all major religions of the world¹¹. In Philosophy, the development of the notion of the natural rights of man was contributed by the stoic philosophers. They first developed natural law theory and by virtue of it they explained the nature of human rights. i.e. rights which every human beings possess by virtue of being human¹²

IV. The Indian Perspective on Human Rights

The concept of human right is not from western region. It is the crystallization of the values which are common for all the mankind. The United Declaration of Human Rights (1948) did not come from the leaved suddenly but it's a milestone on the path on which the concept of human right is already travelling for centuries. In fact, the language of human right is the product of European countries but the concept of human rights is as old as the Indian culture. The humans expressed their concern towards human rights and fundamental freedom for all since the Vedic age.¹³

V. Human Rights in Ancient Times

Scholars who have spent long time in lucubration on the Hindu "Dharmasastras" and the "Arthasastras" and other legal treatises of the past have discovered an amazing system, which, inter- alia, regulates the duties of Kings, judges, subjects and judicial as well as legal procedures. The central concept is Dharma, the functional focus of which is social order. The message is "Dharma" as the supreme value, which binds kings and citizens, men and moment. Human rights

⁶ H.O.Agarwal, *Human Rights*, 2(Universal Book Traders, New Delhi, 2002)

⁷ Babylonian King Hammurabi issued a set of laws to his people which is called "Hammurabi Code", established fair wages, offered protection of property and required changes to be proven at trial.

⁸ Teaching Human Rights, United Nations, 5 (New York, 1989).

⁹ Karel Vasak, "Human Rights a legal Reality". The International Dimensions of Human Rights, vol II, English Ed. by Phillip Alston, UNESCO .pp, 4-10.

¹⁰ In this play, Sophocles describes describes that Antigone's brother, while he was rebelling against the king, was killed and his burial was prohibited by the king Creon. In defiance of the order Antigone buried her brother. When she was arrested for violating the order. She pleaded that she had acted in accordance with the immutable, "un written laws of heaven" which even the king could not override. Sophocles Antigone, The Unwritten, Unchanging laws of the gods, see also Dr. U. Chandra, "Human Rights", p 1-2.

¹¹ P.N. Bhagwati, *Human rights, International law association* 7 (Allabad Centre 1980).

¹² GalusEzejeoffor, *Protection of Human Rights under the law*, 4 (Butter worth London -1964).

¹³ Arun Raj, National Rights Commission of India, formation, functioning and future prospects, vol-1. Khana, New Delhi, 2005, p.37

gain meaning only when there is an independent judiciary to enforce rights. Here, the Dharmasastras are clear and category.¹⁴

In ancient India, the trace of the concept of human rights can be paved back from the Vedas period of the fifteen century B.C. There are wide range of stories, pronouncements found which showed the way to the concept of human rights. In Vedas, human right is signified with the concept of equality. The Charter of equality of all as defined in the Vedas in the following words-No one is superior inferior all should strive for the interest of all and should progress collectively. Kautilya beautifully sum up the concept of welfare state by saying that the happiness of the state lies in the happiness of his subjects. Under the period, the civil and legal rights first formulated by Manu but also added a number of economic rights. From the fact and stories, it is truly revealed that the society under Vedic period was well stimulated and organized and committed towards human right. In fact, the importance of human rights were well supported by Jainism, Buddhism and other minority religious group. No discussion of human rights and their roots in the ancient period is left without giving the reference of Asoka. Asoka inscribes, "All men are my children and just desire for my children that they may enjoy every kind of prosperity and happiness with in this world and in the next, as also as I desire the same for all men". In fact, the king Asoka worked day and night for the protection of human rights. It's unfortunate that the decline of human rights were witnessed with the decline of Mauryan Empire.^{15\}

VI. Human Rights in Medieval Times

As medieval period signifies the Muslim era in India. In the pre-Mughal period the series of social, cultural, political and religious rights were existed but with the advent of Mughal, the Hindus were stressed badly. The concept of human rights got lost in the dark. But with the entry of Akbar's (1526-1605) period, once again great regard given to the social, religious and political rights. In his religious policy, Din-E-Ilahi (divine religion), he tried to preach the idea of secularism and religious tolerance. Similarly, Various religious movements like Bhakti (Hindu) and Sufi (Islamic) made remarkable contribution to the emergence of human rights which at times suppressed by the other Mughal Empires like Aurangzeb, Babar, Humayun etc.¹⁶

VII. Human Rights in Modern India

This period starts from the advent of British Empire. The process of Indian administration started by the Britishers with the introduction of Regulating Act of 1773. Under it, Indian were surprised by the Britishers completely in context to social, economic, political & religious rights in all the sphere of life. They were told that they did not deserve any rights. Basic rights such as rights to life & livelihood, right to freedom, right to expression, right to equality, right to preach etc were denied to them. In such a atmosphere, the Indian leaders & people feel that their rights had been lost in the hands of the colonial rule, so they thought of diverting back to fight for their rights. Perhaps the first explicit demand for fundamentals rights appeared in the Constitution of India Bill 1895. The Bill guaranteed every Indian the right to expression, right to equality before law, right to property, right to personal liberty, right to education etc. A series of resolution were passed between 1917 & 1919 for demanding civil rights & equality. Another major development was drafted by "Mrs. Besant's Common wealth of 1925."¹⁷

VIII. Human Rights and the Constitution of India

The Constitution provides some Fundamental Rights to its citizens. The Fundamental Rights are included in Part III of the Constitution (Articles 12-35), these rights were finalized by a committee of the Constituent Assembly headed by Sardar Vallabhbhai Patel.¹⁸

The Fundamental Rights included in the Indian constitution are guaranteed to all Indian citizens.¹⁹ These civil liberties take primacy over any other law of the land. They include individual rights common to most liberal democracies, such as equality before the law, freedom of speech and expression, freedom of association and peaceful assembly, freedom

¹⁴V.R. Krishalyer, *The Dialectics and Dynamics of Human Rights in India: Yesterday Today and Tomorrow*, Tagore Law Lectures (New Delhi: Eastern Law House, 1999) 115.

¹⁵Durga Das Basu, *Human Rights in Constitutional law*. Prentic Hall of india.150(New Delhi,1994)

¹⁶Malkit Singh, "Thinking of Human Rights in Colonial India." Research Journal Social Science. Vol- 15no.2.,2007, p.84

¹⁷J.C.Johari, *Human Rights and New World Order Towards Perfection of the Democratic way of life*,2 (Anmol. New Delhi,1996)

¹⁸Jitinder Kaur, *Human Rights and the Indian Constitution*, 118 (New Delhi: Viva Books).

¹⁹D.D Basu, (Reprint, 2000) *Introduction to the Constitution of India*, 18th edition78 (New Delhi: Wadhwa& Company).

of religion, and the right to constitutional remedies for the protection of civil rights such as habeas corpus. In addition, the Fundamental Rights for Indians are aimed to topple the inequities of past social practices. They abolish the practice of untouchability; prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth; and prohibit traffic in human beings and forced labor. They even protect cultural and educational rights of minorities by ensuring them to preserve their distinctive languages and establish and administer their own education institutions.

There are six fundamental rights enshrined in the Indian Constitution. Right to equality is included in Articles 14, 15, 16, 17 and 18 of the constitution. It is the principal foundation of all other rights and liberties. Article 14 describes that all citizens of India shall be equally protected by the laws of the country. Article 15 of the constitution provides that no individual shall be discriminated on the basis of caste, colour, language etc. However, the State may make any special provision for women, children, and for socially or educationally backward class or scheduled castes or scheduled tribes. Article 16 of the constitution defines that the State cannot discriminate against anyone in the matters of employment. However, there are some exceptions, the parliament has the right to enact law/s describing that certain jobs can only be filled by the applicant/s who are domiciled in the area for the post that require knowledge and the language of the locality or the area. The state may also reserve posts for members of educationally and economically backward classes, scheduled castes and tribes for their adequate representation in the jobs. Article 17 abolishes the practice of untouchability. Article 18 of the constitution prohibits state from conferring any titles. This means that the citizen of India cannot accept titles from a foreign state. But Military and academic distinctions can be conferred on the citizens of India and also the awards of *Bharat Ratna* and *Padma Vibhushan* cannot be used by the recipient as a title.

Except the right to equality, the Constitution of India provides the right to freedom, given in articles 19, 20, 21 and 22. Freedom of speech and expression (it includes the freedom of press), freedom of assemble peacefully without arms, freedom to form associations or unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of the territory of India, freedom to practice any profession or to carry on any occupation, trade or business are some of the freedoms which are provided to Indian citizen.

However, at the same time these freedoms can be restricted in the interests of public order, morality and the sovereignty and integrity of India. Freedom of speech and expression, generally interpreted to include freedom of the press, can be limited "in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence"

The constitution also guarantees the right to life and personal liberty under article 20 and 21. Article 20 states that no individual can be awarded punishment which is more than what the law of land prescribes at that time. This legal axiom is based on the principle that any criminal law cannot be made retrospective. Therefore, the essential condition for an act to become a crime or offence is that it should have been an offence legally at the time of committing it. It also provides that no person can be convicted twice for the same offence. Article 21 declares that no citizen can be denied his/her life and liberty except by law. Therefore, an individual's personal liberty can only be disputed if the person has committed a crime. This right does not include the right to die thus suicide or an attempt thereof is an offence.

Rights of a person arrested under ordinary circumstances are laid down in the right to life and personal liberty. No person can be arrested without being informed about the grounds for his/her arrest. If arrested the person has the right to defend himself by a lawyer of his choice and also the arrested citizen has to be brought before the nearest court within 24 hours²⁰

In 2002, Article 21 (A) was incorporated by the 86th constitutional amendment act. The primary education has been made a fundamental right under the right to life and personal liberty. It says that "to the children in the age group of six to fourteen years shall be provided free and compulsory education" by the state.

There are provisions that state can impose restrictions on these rights for the interest of independence, sovereignty and integrity of India. Nevertheless, the right to life and personal liberty cannot be suspended. The six freedoms described above are suspended automatically or bear some restrictions imposed on them during the state of emergency.

Article 23 and 24 provides the right against exploitation. It has two provisions, one being, the abolition of trafficking in human beings and Begar (forced labor) and other the abolition of employment of children below the age of 14 years in dangerous jobs like factories and mines.

Articles 25, 26, 27 and 28 of the constitution cover the right to freedom of religion. The objective of this right is to maintain secular nature of Indian state. Thus all religions are considered equal before the state and no religion shall be given preference over other. Citizens are free to preach, practice and propagate any religion of their choice. It also

²⁰AjitBhattacharjee, (1997) (ed) *Social Justice and the Constitution* (Shimla: Indian Institute of Advanced Studies).

includes the freedom not to practice a religion and to propagate such views. However, the state can restrict certain practices of religions in the interests of public order, morality and health; say for example the wearing and carrying of *Kirpans* in the profession of the Sikh religion can be restricted by the state. There are some other provisions like religious communities can set up charitable institutions and no Individual shall be compelled to pay taxes for the promotion of a particular religion. It should also be noted that the institution/s run by the state cannot impart education that is pro-religion Article 29 and 30 provides special measures to protect the rights of the minorities. While article 29 applies to all the citizens of India, article 30 deals with the rights of minorities. Any religious or linguistic community that has a language and a script of its own has the right to conserve and protect them. State cannot discriminate any citizen against for admission in State or State aided institutions.

All minorities, religious or linguistic, can set up their own educational institutions in order to preserve and develop their own culture. In granting aid to institutions, the State cannot discriminate against any institution based on the fact that it is administered by a minority institution. Although state can interfere in case of maladministration.²¹ Article 32 of the constitution deals with the right to constitutional remedies. It empowers the citizens to seek a court of law in case of any denial of the fundamental rights, by asking the courts to preserve or safeguard the citizen's fundamental rights. It can be done in various ways, for example the courts can issue various kinds of writs. These writs are *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*. This right can be suspended by the central government in case of a national or state emergency is declared.

Except this there was a provision for right to property under Articles 19 and 31. Article 19 guaranteed to all citizens the right to acquire, hold and dispose off property. Article 31 provided that "no person shall be deprived of his property save by authority of law. The 44th constitutional amendment act of 1978 deleted the right to property from the list of fundamental rights. A new article (Article 300 A) was introduced which says that 'no person shall be deprived of his property save by authority of law'. Therefore, if a legislature makes a law that deprives a person of his property, there would be no obligation on the part of the State to pay anything as compensation. The aggrieved person shall have no right to move the court under Article 32. Thus, the right to property is no longer a fundamental right, but a constitutional right.²²

Rights simply mean the freedom which is necessary for the individual good and at the same time for the good of the community. The fundamental rights guaranteed under the Constitution of India have been incorporated into the *Fundamental Law of the Land* and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment.²³

IX. Conclusion

Human rights are fundamental to the stability and development of countries all around the world. Great emphasis has been placed on international conventions and their implementation in order to ensure adherence to a universal standard of acceptability. With the advent of globalization and the introduction of new technology, these principles gain importance not only in protecting human beings from the ill-effects of change but also in ensuring that all are allowed a share of the benefits. The impact of several changes in the world today on human rights has been both negative and positive. In particular, the risks posed by advancements in science and technology may severely hinder the implementation of human rights if not handled carefully. In the field of biotechnology and medicine especially there is strong need for human rights to be absorbed into ethical codes and for all professionals to ensure that basic human dignity is protected under all circumstances. For instance, with the possibility of transplanting organs from both the living and dead, a number of issues arise such as consent to donation, the definition of death to prevent premature harvesting, an equal chance at transplantation etc. Genetic engineering also brings with it the dangers of gene mutation and all the problems associated with cloning. In order to deal with these issues, the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application and Medicine puts the welfare of the human being above society or science.²⁴

²¹Upendra, Baxi, (1987) (ed). *The Right to be Human* (New Delhi: India International Centre).

²²TapanBiswal, (2006) (ed). *Human Rights, Gender and Environment* (New Delhi: Viva Books).

²³, S.K Ghosh (1980) *Protection of Minorities and Scheduled Castes* (New Delhi: Ashish Publishing House).

²⁴*Human Rights: New Dimensions and Challenges* (J. Symonides ed., Aldershot: Ashgate, 1998) at 17-23