

## Human Rights, Rule of Law and Role of Lawyers

### Human Rights

Dr. Shivaraj V Patil \*

Human rights have a long process of evolution. Basically, human rights are integral part of human life and it is the possession of these rights that distinguish human beings from other species. At all times and in all ages, right from the beginning there was oppression of human beings by human beings, leading to struggles and revolutions for restoration and protection of human rights. In history and ancient scriptures, references to the basic human rights can be easily noticed. The Rigveda, one of the oldest documents of human civilization, declares that all human beings are equal and they are all brothers. The Atharvaveda proclaims that all human beings have equal right over food and water. The Vedas were the primordial source of 'Dharma' a compendious term for all human rights and duties. The observation of 'Dharma' was regarded as essential for securing peace and happiness to individuals as well as society. All such works were intended for securing happiness to all. "*Sarve Jana Sukhino Bhavanthu*" was the ethos of our motherland.

Modern historians give credit to MAGNA CARTA (A.D. 1215). The term Human Rights was introduced in the United States' Declaration of Independence in 1776 and

thereafter it became part of the bill of rights in US Constitution. Consequent upon the French Revolution, Declaration of Rights of Man and Citizen emerged in 1789. In 1929, the Institute of International Law, New York, USA, prepared a Declaration of Human Rights and Duties. The Inter-American Conference passed a resolution in 1945 seeking the establishment of an International Forum for the furtherance of Human Rights of Mankind.

*"Human Rights are inscribed in the hearts of people; they were long before they drafted their first proclamation"* – Mary Robinson. In Paris on 10<sup>th</sup> December, 1948, the UN adopted the Universal Declaration of Human Rights (UDHR). The declaration came at the time when the world was recovering from a long period of bloody and horrific conflicts. The Declaration proclaims that all human beings are born free and equal in dignity and rights. All human rights derive from the dignity and respect inherent in the human person by virtue of his birth as a human being. In history and ancient scriptures, references to basic human rights can easily be noticed, though they were not referred to specifically as such.

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\* Former Judge of Supreme Court of India and former Member, National Human Rights Commission, E-mail : patilsvp@gmail.com

It is interesting to know that the “*International Human Rights Movement was born in and out of the Second World War*”. It is ironic that Adolf Hitler, who was responsible for the terror and violence, gave rise to the awakening of the conscience of mankind, opposing repetition of such barbaric and inhumane crimes.

Human Rights can be generally understood as those rights which are inherent in human beings without which they cannot live as human beings. These are the rights which every human being is entitled to enjoy and to have them protected. Twentieth century was considered as the century for '*Democracy and Human Rights*'. Generally main features of Human Rights are:-

1. Basic and inherent with which a person is born.
2. Equal universal inalienable.
3. Contempt or disregard of them lead to barbarous acts devoid of consciousness of human being.
4. Recognizing and respecting every human being in political, social cultural and economic spheres.
5. Indivisible inter-related and inter-dependent

Human Rights demand treating others as we expect others to treat us. They are natural rights come by birth as human beings. No effort need be made to acquire them. Section 2(d) of the Protection of Human Rights Act, 1993 defines “*Human rights*” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts of India”.

The Universal Declaration of Human Rights 1948, declares, “*all human beings are born free and equal in rights and dignity*”. Human rights broadly constitute two

cartograms of rights; (1) rights which are essential for the dignified human existence, viz. The right to have basic human needs like food, clothing, shelter and medical care; and (ii) rights which are essential for the adequate development of human personality such as the right to education, the right to freedom of speech and expression and the right to free movement.

It is nice to remember and recognize that human dignity is the spine of Human Rights.

The United Nation's Charter is a land mark document which proclaimed that the people of United Nations “*re-affirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women*” and in “*Universal respect for, and observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion*”.

10<sup>th</sup> December, 1948 was a remarkable day in the modern history of mankind. That is the day on which the United Nations made declaration of human rights. This declaration was not either a sudden or miraculous event. It was the effect of a cumulative and continuing movement of human conscience and changes in thinking that went on over a long period.

The Proclamation of Universal Declaration of Human Rights (UDHR) on December 10, 1948 is not a mere declaration, it represents the collective wisdom of the world community to work together towards a world without injustice, indignity and ignorance; a world without cruelty and hunger.

Martin Luther King said, “*injustice anywhere is a threat to justice everywhere*”. It is more so when the whole world has become a

global village due to tremendous advancement in science and technology and transport and communication. Mahatma Gandhi also said peace all over the world can be established not on gun power but on pure justice.

Unless the synthesis of political and civil rights with economic, social and cultural rights is properly evolved, there will always remain in the society, a sizeable deprived section. The gap and disparity between the fortunate, less fortunate and unfortunate inevitably lead to disturbance, tension, conflicts, violence and commission of offences. This will impair peace, stability and progress of the country activating forces opposed to the preservation of human rights.

It is a matter of common knowledge that wars produce hunger. But people seem to be less alive to the fact that hunger can lead to war. It is undebatable that hunger and peace cannot co-exist. In other words, while hunger rules, peace cannot prevail. All democratic institutions have onerous and greater responsibility and duty to respond to the challenges, to maintain the abiding faith and continuing confidence of the society, which the society has reposed in them, because they essentially exist for the society.

Article (i) of the preamble of the Universal Declaration of Human Rights state that “*All human beings are born free and equal in dignity, they endowed with reason and conscience should act towards one another in a spirit of brotherhood*”.

Human rights by their very nature, constitute the minimum that is necessary for

an individual to live in civil and political society as a free individual with dignity and respect; to realize his full potential; and also as a member of the society. Denial of these rights would create handicap to the individual from developing his talents and from making his maximum contribution. Human rights is a growing and dynamic branch of national and international law.

The Universal Declaration of Human Rights was proclaimed in a little over three years after the United Nations Charter. This Declaration was a statement of intent or principle, and not a treaty or a legal agreement between the countries or the binding legal documents, yet it was a document of great influence.

It is relevant to mention here as to the evolution of the contemporary concept of human rights. Contemporary evolving concept is stated in terms of three generations of human rights. First generation of human rights are mainly concerned with the civil and political rights of the individual, in other words, the '*liberty oriented*' rights. These were meant to impose with '*negative obligations on the Govts. to desist from interfering with the exercise of individual liberties*'. These rights were among the major concerns of all liberal and democratic movements since the 19<sup>th</sup> century.

The second generation of human rights can be said to be '*security oriented*' and provide for social, economic and cultural security. These rights are positive in nature as they make it the duty of the State to ensure for

the realization of these rights. The United Nations Declaration of Human Rights indicated the consensus of principles which form the basis of the first and second generation rights.

The third generation of human rights relatively are of recent origin. They have come into existence in response to various concerns over which the international consensus has emerged in recent years. These included environmental, cultural and development rights. They relate to rights of groups of people rather than individual. The developing countries have played a significant role in bringing about international consensus on these rights. The most important example of these rights is the declaration on the right to develop, adopted by the United Nations General Assembly in 1986.

Twentieth century had witnessed unprecedented human losses, devastations and destruction of the two world wars. At the end of World War II the United Nations was established in 1945, to fulfil the long cherished aspirations of the world community for world peace, prosperity and happiness of all human beings inhabiting in any part of the world irrespective of race, religion, region, caste, creed, colour and community.

### **Human Rights Perspective in Indian Constitution**

The Universal Declaration of Human Rights by the United Nations on 10<sup>th</sup> December, 1948, gave global focus and thrust to the Human Rights. This Declaration guarantees rights to life, liberty, property equality before law, privacy, fair trial, safeguards against torture, slavery and other

degraded practices, protection of family and minorities, free expression, opinion, association, assembly movement, religion, conscience and culture. These rights have been accepted by most of the countries and they are reflected in the Constitutions of many countries. Most political and social systems accept these rights as basic minimum of civilized existence. When the Constituent Assembly adopted the recommendations and drafted the Constitution of India, the Declaration of Human Rights 1948 had already been made hoping that ultimately nations will embody these Human Rights in the constitutional documents.

It is a matter of great pride and satisfaction that this great nation of ours, accepting and recognizing the principles of UDHR, made them an integral part of its constitutional obligations. This shows firm commitment and great concern of our country to Human Rights. The resolution of people is set out in the Preamble to the Constitution to constitute India into a sovereign, socialist, secular, democratic republic and to secure to its citizens justice, liberty, equality and fraternity. The resolution embodied in the Preamble assures the dignity of the individual which is the basic principle underlying the UDHR and in order to give effect to this assurance, provisions are made in Part-III and Part – IV of our Constitution as Fundamental Rights and Directive Principles of State policy. The rights conferred by part – II are fundamental and they are enforceable by courts. The Directive Principles laid down in Part – IV are not so enforceable but they are none-the-less fundamental in the governance of the country. The UDHR speaks of two sets of rights – (1)

civil and political and (2) economic and social rights. Broadly speaking, the traditional civil and political rights were enshrined as Fundamental Rights under our Constitution, while the economic and social rights were set forth as Directive Principles. Thus in Part – III and Part – IV, the Indian Constitution sets out declaration of Human Rights elaborately consistent with unity of the nation and the interest of the general public.

A comparative study of UDHR on the one hand and the Fundamental Rights enunciated in Part – III and Directive Principles stated in Part – IV of the Constitution shows many similarities in content and form. Though the framers of the Constitution of India would have been influenced by British legal concept and American constitutional traditions, the impact of UDHR is quite visible being contemporaneous. In making of the constitution of the country, the historical background and prevailing conditions in the society invariably have impact.

Respect for Human Rights is the greatest inspiration for integration of humankind, both internally and internationally. These are the days of modernization, liberalization, privatization and globalization. All these must have element of humanization. Humanize the globe so that human rights violations are less. Though they may not be totally eliminated but can be certainly minimized. '*All human rights for all*' should not merely remain, as declaration on paper but it must be the spirit of living in day-to-day life. Treat others as you expect others to treat you, will really serve the purpose of human rights. Recognition of the inherent rights of all human beings as well as equal entitlement of each individual to all

human rights forms the core of human rights doctrine.

The record of legislature and judiciary in the country in promoting Human Rights has been quite impressive. The problem of Human Rights is not only a legal problem, it has effect upon society, economy and even culture. However, the battle for prevention of violation of Human Rights is to be fought with sincerity and commitment. All the institutions and individuals concerned should have unshaken faith in the observance of Human Rights. They all must strive for better protection and promotion of Human Rights to make the lives of human beings worthy of living with dignity and grace. .

#### **Rule of Law – Role of Lawyers**

We are committed to democracy. The proper functioning of democracy depends upon the rule of law, being the basis of our institutions. A Government of law is the great organ through which sovereign power of the people moves.

No free nation can ignore or forget the importance of law and judiciary. The rule of law has been a success and is ever progressing in this country, the lawyers and judges are to be credited for their contribution. It is needless to state that the supremacy of the rule of law is absolutely essential for the working of democracy.

Rule of law is fundamental to maintain social order. Obedience and respect for law should be commended and commanded through the force of law and not by the law of forces leads to destruction of Rule of Law, and Force and Law protect it. Preference of citizens for Law and Order within the State reflects the Rule of Law.

Rule of Law is a dynamic concept and it takes within itself as an integral part, the recognition and protection of civil and political rights of an individual in a free society and also establishment of social, economic educational and cultural conditions under which he is able to achieve his full dignity and genuine aspirations.

The profession of law is a great profession. Its continued existence is necessary for the administration of justice as well as for the proper functioning of the democratic republic. Good lawyers have been a boon not only to their clients but also for the whole country.

The standard and quality of democracy practiced in a country is judged and measured by the independent and impartial judiciary and fearless & efficient legal system.

Indian freedom movement witnessed lawyers' sacrifices for the cause of the country. Perhaps, no other section of the educated class, besides the section of lawyers, had to its credit greater struggle for the cause of masses. Mahatma Gandhi, Motilal Nehru, Dr. Rajendra Prasad, Jawaharlal Nehru and Sardar Patel are only a few out of long list of lawyers and legal luminaries who left the courts and went to jails.

Lawyers should not forget that they have glorious traditions behind them left by the previous generations. They have to maintain those traditions of love and service to the country. Chief Justice of India, Shri MC Mahajan felt that *“a strong Bar and a strong judiciary were sine-qua-non for the maintenance of rule of law. If the Bar becomes a mere money making machine, then it will be failing in its duty towards the nation.”*

Lawyers do come in contact with people of all kinds and status. As influential citizens they can influence and do a great deal to build up a sound and progressive society. They have the great responsibility to protect, preserve and promote democratic values and democratic institutions in the country, by striving to uphold the rule of law.

Love of our nation must be our burning desire. Lawyers should remember, service is the key note of profession, and should not consider it as a mere means of livelihood. The profession of law is a public institution, and lawyers discharge public duty in so far as they assist in the administration of justice.

Lawyers should not be content merely with conducting their own cases and earning money. Today if they want to occupy a place in society as earlier, they should enlarge their mental outlook, realize their duties to society and make their contribution to the social and economic welfare of society while promoting, protecting and preserving rule of law consistent with the Constitution of India.

For the continued existence and sustenance of a truly democratic State, the administration of justice should be in the hands of not only competent but also impartial, independent and conscientious persons so that justice is rendered and rule of law is upheld, which is imperative to a free society. To maintain and make meaningful the ideal enshrined in our Constitution, promising to secure to all its citizens justice, equality, liberty and fraternity, eternal vigilance is necessary. Let the Constitution of India not remain merely a document of admiration but let us see it works as a dynamic and vibrant instrument for real social transformation.