

# HUMAN RIGHTS IN INDIA-A HISTORICAL PERSPECTIVE

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**Abstract** - *The present paper aims at understanding the concept of evolution of human rights and gives a clear outlook of the various stages, ancient, medieval and modern through which it comes in the Constitution of India. Moreover Indian judiciary gives a concrete shape to human rights and plays active role in enforcing these rights to all the people in India.*

**Key Words:** Human rights, India, Constitution, Judiciary

## 1. INTRODUCTION

Human Rights are as old as Human Civilization. Human beings are rational beings. They, by virtue of their being human, possess certain basic and inalienable rights which are commonly known as human rights. 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 being. To have human rights, one need not to do anything special than be born a human being<sup>[1]</sup>. They are based upon the belief that all persons are born free and with equal dignity. Being the birth rights, these are inherent in all the individuals irrespective of their caste, creed, religion, sex and nationality<sup>[2]</sup>.

In general sense Human Rights denote the rights of human. However in a more specific sense, Human Rights constitute those very rights which one has precisely because of being a human being. Human Rights and fundamental freedoms allow us to develop fully and use our human qualities, our intelligence, our talents and our consciousness and to satisfy our spiritual and other needs. They are sum total of the opportunities which ensure adequate development and expression of individual personality. Without such opportunities man cannot lead a decent life.

The philosophy of human rights in India has come a long weary way yet the progress through the historical path has always remained gradual and never lost its link with past.

### 1.1 Human Rights in Ancient India

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<sup>[3]</sup>. Philosophy of human rights had already occupied a place of prime importance in ancient Indian Brahmanical society. In ancient India, law, which was structured on the philosophy of dharma, did not have much scope for religious discrimination. We learn from the Mahabharata that dharma was ordained for the advancement of all creatures as well as for restraining creatures from injuring one another<sup>[4]</sup>. In the Bhagavad Gita righteousness has been described as the essence of dharma. The Upanishads speak of dharma as the foundation of the whole universe, through it one derives away evil<sup>[5]</sup>. The Vedas and Smritis have spoken highly of equality of brotherhood e.g. *vasudevakutumbakam* (the whole world as one family). All the four Vedas insist equality and respect for human dignity.

In the whole eighteen Puranas, Vyasa has said two things: doing good to another is right, causing injury to another is wrong. Whether it is Mahabharata or Arthashastra or Manu Dharmashastra or Narada, there is great emphasis on the institution of kingship and Rajdharmain order to escape from political disorder, social chaos and injustice. Kings were required to take a pledge never to be arbitrary and always to act according to "whatever law there is and whatever is dictated by ethics and not opposed to politics"<sup>[6]</sup>.

The teachings of Buddha, Ashoka worked extensively for the protection of human rights. His chief concern was the happiness of his subjects. Ashoka had been successful in the establishment of a welfare state and basic freedoms were available to people. King used to dispense justice to the people. The study of Mudra Rakshas shows that dispensation of justice was considered as one of the important duties of the rulers<sup>[7]</sup>.

Hence, it is abundantly clear that ancient Indian jurisprudence stood for enlarging and encouraging human freedom, liberty and equality for all people. It has developed common ideas based on human unity and harmony which transcends diversities of race, colour, language, religion etc.

### 1.2 Human Rights in Medieval India

During Muslim era, the Muslim rulers in India were fundamentalist and despotic who forced upon the Hindus their own laws, customs and religious practices. Hindus were not treated in law on par with the Muslims – the latter being the conquerors and the former being the Kafirs-the non-believers of Islam, special disabilities like jazia, were imposed on Hindus. Muslim rule in India was not founded on the basic principles of human dignity, equality and justice, and was essentially autocratic, theocratic and irresponsible, devoid of the idea of rule of law, morality, justice, tolerance and social harmony<sup>[8]</sup>. Some of the Mughal rulers, especially Akbar the great brought about a basic change in the style of Moghul administration. He adopted a policy of tolerance and non-discrimination towards Hindus and saw that no injustice is committed in his realm. His policy of tolerance and non-discrimination towards Hindus was followed by his son Jahangir too. During the reign of Aurangzeb, the concept justice was made less intricate and more expeditious than in the former reigns. Corruption in Judiciary was made a crime for the first time. If delay in Justice resulted in loss to a party, the aggrieved party could be compensated by the judge himself<sup>[9]</sup>.

During the Mughal rule in India, the right of an accused to be released on bail did exist. Similarly, the benefit of doubt (Shuba) was known to Muslim jurisprudence in the administration of criminal justice which entitled an accused to be acquitted<sup>[10]</sup>. Aurangzeb was the most cruel, fanatic and despotic ruler. He made earnest efforts to convert Kashmiri Pandits to Islam with the use of his governmental machinery. The Bhakti movement evolved in later periods ultimately reviewed and regenerated the old Indian values of truth, righteousness, justice and morality. The inalienable, immutable and everlasting natural law found its exponent in the great saints like Sankara, Ramanuja, Madhava, Tulsidas, Kabir, Nanak, Swami Ram Krishna, Swami Dayanand Saraswati, Raja Ram Mohan Roy and others. The philosophy of these Social reformers and leaders was nothing but a reinstatement of natural law with religious fervour to enthuse people towards the path of Dharma, enlightenment and unity at the time when Hindu society was dominated and divided by foreigners.

The cult of Sufism prevalent in Medieval India spread the message of secularism by the symbiotic synthesis of the core values of different religions to bind the pluralist society. Saints and holy persons propagated the message of the Sufi saints to emphasise that the difference between human beings is man-made, all being born equal<sup>[11]</sup>.

It may be recalled that from time immemorial Indians have called their culture by the name of 'human culture' (Manav Dharam/Manav Samriti). No gain saying the fact that human dignity had universal appeal and Indian Culture had tried to be so comprehensive as to suit the needs of every human being, irrespective of age, colour, sex or caste<sup>[12]</sup>.

### 1.3 Human Rights in Modern India

British rule in India can be seen in the modern period. During this period the British Government of India had not only deprived the Indian people of their freedom but had based itself on the exploitation of the masses, and ruined India economically, politically, culturally and spiritually. The British Indian rulers discriminated against Indians in matters of their political and civil liberties and rights. They resorted to arbitrary acts such as brutal assaults on unarmed satyagrahis, internments, deportations etc. against Indians fighting for national independence, equal justice and economic equality<sup>[13]</sup>.

After witnessing the colonial rule, every Indian was of the firm opinion that the recognition, protection and implementation of human rights are not only basic but also inalienable for them for leading a civilised life. It is, however, after the national struggle for freedom that a concrete movement for claiming the human rights for the people of India took shape in which people from different walks of life joined together to achieve swaraj (independence) for themselves.

Raja Ram Mohan Roy (1772-1823), one of the greatest rationalist and creative thinkers of his age led India in the earliest period for her transformation from feudalism to modernity. His rational mind made him a poignant critique of those religious rituals of Hinduism like, Sati and Child marriage, which patronised and promoted societal violence against women in the name of religion. His opposition of polygamy and his advocacy for equal rights of women including the right of widows to marry and right of women to property also came from his firm belief in the supremacy of reason<sup>[14]</sup>. Ram Mohan can reasonably be regarded as the founding father of human rights movement in modern India.

Concerted efforts made by the Indian National Congress which demanded basic human rights in the Constitution of India Bill, 1895. The rights like freedom of expression, right to property, equality before law and inviolability of one's own home, figured in this Bill. Congress as early as in 1918 on Bombay session demanded declaration of rights of people of India and again demand of these basic rights were reiterated in Nehru Committee Report in 1928. The Congress in the resolutions of 1917 and 1919 asserted demand of civil rights and equal status with the English men. In 1922, Congress aimed at achieving swaraj to shape dignity of the country. The Sapru Report (1945) incorporating the proposals of fundamental rights did not find favour. Simultaneously, the freedom struggle had reached its climax and demand for independence gained momentum. And finally India got independence on 15<sup>th</sup> August, 1947 and the Constituent Assembly pledged to draw Constitution for the country which was enacted and adopted by the people of India on 26<sup>th</sup> January, 1950. The human rights content of the Indian Constitution is a complex amalgam of civil and political rights along with economic, social, religious and minority rights.

The Preamble, Fundamental Rights, Directive Principles of State Policy, newly added Fundamental Duties, reservation for scheduled castes and tribes, special provisions for Anglo- Indians and other backward classes are important constitutional provisions from the human rights point of view. 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 Human Rights, 1948, the International Covenant on Economic, Social and Cultural Rights, 1966 etc. Apart from the various constitutional provisions, various statutes have also been enacted by the Indian legislature with a view to protect and promote human rights. Some of the important legislations enacted by the union are, Protection of Human Rights Act, 1993; National Commission for Minorities Act, 1992; National Commission for Women Act, 1990; Protection of Civil Rights Act, 1995; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; Immoral Traffic (Prevention) Act, 1987; Bonded Labour System (Abolition) Act, 1976; Juvenile Justice (Care and Protection of Children) Act, 2000; Child Labour (Prohibition and Regulation) Act, 1986 etc. India has also adopted a number of legislative measures for the social security of the labour, which have been greatly influenced by ILO's standards.

Judiciary in India plays a crucial role in enforcing these rights. By virtue of Articles 32 and 226, the Courts have greatly extended the ambit of judicial review and devised new methods and strategies by opening the doors of justice to the poor and downtrodden through Public Interest Litigation (PIL). It can fairly be said that judiciary in India through the innovation of Public Interest Litigation or Social Interest Litigation has broadened the concept of social justice and has gone much ahead in structuring, expanding, protecting and promoting the human rights<sup>[15]</sup>.

By strenuous efforts the courts are trying to translate the constitutional philosophy of human rights jurisprudence into reality. The judiciary has been rendering judgements which are in tune and temper with legislative intent while keeping the dimensions of fundamental human rights of the citizen so as to make them meaningful and realistic<sup>[16]</sup>. By giving a liberal and comprehensive meaning to 'life and personal liberty', the courts have formulated and established a plethora of rights, such as right to privacy; right to travel abroad; right to livelihood; right to shelter; right to live in pollution free environment; right to medical care; right to education; right to live with human dignity; right to speedy trial; right to free legal aid; right against inhuman, cruel and degrading treatment; right against solitary confinement; right against handcuffing, bar fetters; right to compensation etc. Hence judiciary is expected to act as a catalytic agent of social control and hammer out human rights jurisprudence in the light of the philosophy envisaged by the Constitution.

## 2. CONCLUSION

The concept of human rights is as old as the human existence of the human being on earth. The difference is that these rights were known by different names in different times. It is interesting to note that the concept of rights of human beings is neither entirely western nor modern. The idea of human rights was cherished in India during Vedic and pre-historic period. The Manusmriti and Arthashastra are its living proof. Mahabharata tells about the importance of the freedom of the individual in the state. When British ruled India, resistance to foreign rule manifested in the form of demand for fundamental freedoms and civil and political rights for the people. During the freedom movement, Indian leaders had influenced human rights in their agenda for post-independent India. The framers of Indian Constitution were deeply concerned with the minority problem in India, economic and political exploitation of the people under British rule, and the prevailing social disparities among the different segments of the population. With the attainment of independence, a declaration of rights, the most elaborate in the world was incorporated in the Constitution.

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