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THE CONCEPT OF HUMAN RIGHTS IN THE NATIONAL & INTERNATIONAL PERSPECTIVES: AN OVERVIEW

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ABSTRACT

“I learned from my illiterate but wise mother that all rights to be deserved and preserved come from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define duties of man and women and correlate every right to some corresponding duty to be first performed. Every other right can be shown to be usurpation hardly worth fighting for.”
(Mahatma Gandhi)

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INTRODUCTION

The concept of natural, or fundamental or human rights is not a contribution exclusively of the Western countries. Since the idea of such rights is the common heritage of mankind, every civilized country may claim their protection and observance from ancient times to the present. The whole concept now looks like a crystallization of certain values which have been cherished by the conscientious people in all times and in all places. One may, however, trace a line of difference either in the way of affirmation or in their application to a particular section of society in different countries of the world. For instance, in India the concepts of rights, a freedom was not open to all segments of the society in an equal and uniform measure due to the prevalence of caste system. In Muslim countries rulers, discrimination was made on the basis of religion as a result of which the non- Muslims or the infidels were subjected to cruel and inhuman treatment. Democracy in a comprehensive sense is not merely a term of state and government; it is also a form of noble social and dignified way of individual and collective life. Apart from enjoying residence of sovereign power of the state in the people, it also

desires a social order in which justice- social, economic and political should inform all institutions of a people's life. Man's fight for freedom is as old as his life on this earth. Leaders like Socrates, Lincoln and Gandhiji paid with their life for this great cause. The most starting feature of the concept of the human rights is that “they may be difficult to define but impossible to ignore.” Man as a member of the human society has some rights in order to survive as well as to make his life better. In a different sense, human rights are a species of moral rights; they are moral rights in which all persons are equal simply because they are human. To call them moral is to say that they are based upon or justifiable through a valid moral principle.

Development of Human Rights

Fundamental or human rights in the sense of civil liberties with their modern attributes and overtones “are however, a development more or less parallel to the growth of constitutional government and parliamentary institutions from the time of British rule in India.” The case of human rights or fundamental rights of the Indian people became an essential part of the struggle for freedom from British rule. The list of fundamental rights to be incorporated into the constitution of India found its conspicuous place in the Nehru Report of 1928. The scope of fundamental rights claimed by the Indian

National Congress became wider when it adopted a comprehensive charter at its Karachi session held in 1931 covering social and economic rights of the people. The objectives Resolution moved by Pundit Jawaharlal Nehru in the constituent Assembly on 13 December, 1946 inter alia said, "Wherein shall be guaranteed and secured to all people of India justice-social, economic and political equality of status of opportunity and before law; freedom of thought, expression, belief, faith, worship, vocation, association and action subject to law and public morality; and wherein adequate safeguards shall be provided for minorities, backward tribal areas and depressed and other backward classes ..." It was adopted by the Assembly on 22 January 1947 and it shaped the eventual form of the fundamental law of our land through all subsequent stages.

Universal Declaration of Human Rights

The adoption of the Universal Declaration of human rights by the General Assembly of the United Nations had its definite impact on the making of the Indian constitution. The text of the part III containing fundamental rights is a clear proof of the fact that our founding fathers accommodated herein much what was given in the great declaration. The provisions relating to equality, freedom, non-exploitation, religion, and education and cultural and property show that the makers sought to mold them in conformity with the accepted norms of civilized human behavior. It is well observed "coming closely on the heels of the Universal Declaration of Human Rights inclusion of the bill of rights in the constitution of India accorded with the contemporary democratic and humanitarian temper and constitutional practice in other nations of the world. Also it reflected in no small measure the anxiety of the founding fathers to incorporate and implement the basic principles enunciated in the Universal Declaration. In fact, within a year of the adoption of the Universal Declaration of human Rights, the Assembly incorporated into the constitution of India the substance of most of these rights. The two parts- the fundamental rights and directive principles of the constitution of India – between them covered almost the entire field of the Universal Declaration of Human Rights. Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is foundation of freedom, justice and peace in the world.

This declaration is as a common standard of achievement for all people and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance and among the peoples of territories under their jurisdiction. International convention on the elimination of all forms of racial discrimination;- Considering that the charter of the United Nations is based on the principles of the dignity and equality inherent in all human beings and that all Member-States have pledged themselves to take joint and separate action, in co-operation with the organization for the achievement of one of the purpose of the United Nations which is to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The Russian revolution of 1917 widened the concept of human

rights and "added a new vital dimension of socio-economic justice or of the social and economic rights of the people." Marx, Engels and Lenin studied the case of rights of man in the context of prevailing social make-up of a country. A society divided between two contending classes would have its own version of rights that would signify availability of all rights to the dominant class of the exploiters and the oppressors and of no rights to the class of the exploited and the oppressed people. In 1843 Marx said; "None of those so-called rights of man urge beyond egoistic man, man as a maker of civil society, that is an individual withdrawn into himself, into the confines of private interests and private caprice, and separated from the community. In the rights of men, he is far from being conceived as a species being; on the contrary, species life itself, society, appears as a framework external to the individuals, as a restoration of their original independence. The sole bond holding them together is national necessity, need and private interest, the preservation of their property and of their egoistic selves."

One of the remarkable contributions of the classical, medieval, modern and contemporary social and political thought to the culture and the civilization of mankind should be traced in the reiteration of human rights. Facts demonstrate that the struggle to preserve, protect and promote such rights has remained till this day in each generation of the people belonging to any part of the great human society. The slaves fought for their rights against the masters, the serfs against the feudal lords, the workers against the capitalists, the females against the males and so on. The matter though discussed at various international, multi-national and regional meets has now come to have concrete form of its own after the General Assembly of the United Nations adopted the Universal Declaration of human rights in 1948. Further developments in the same direction have done miracle in changing the minds and thoughts of the people who, like Plato and Aristotle are engaged in search for a good life that is now termed as 'quality of life'.

The World Conference on human rights held in Vienna in June 1993 adopted the motto of all rights for all, i.e. the civil and political rights as well as economic, social and cultural rights of all human persons and disadvantaged groups. Full enjoyment of all human rights by all in a country depends on their adequate protection under constitution and law providing adequate safeguards against any abuse of power and on delivery of justice by an independent judiciary and an efficient and impartial machinery of law enforcement. The present government is committed to enacting a right to information act to ensure transparency of administration, which will thus enhance accountability of those who govern us.

The Protection of Human Rights Act, 1993

An Act to provide for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human rights Courts for better protection of human rights and for matters connected therewith or incidental thereto. Be it enacted by Parliament in the Forty-fourth year of Republic of India as follow"-

- 1- Short title, extent and commencement –(1) This Act may be called the protection of Human Rights, 1993.

- 2- It extends to the whole of India. Provided that it shall apply to the State of Jammu and Kashmir only in so far as it pertains to the matters relatable to any of the entries enumerated in List I or List III in the Seventh Schedule to the constitution as applicable to that state.
- 3- It shall be deemed to have come into force on the 28th day of September, 1993.

The National Human Rights Commission

The central government shall constitute a body to be known as the National Human Rights Commission to exercise the power according Act. In the pursuance of the implementation of one of the pledges given in the election manifesto of the congress (I) in 1991 and also keeping in view the urgency of the matter in the light of wild criticism of Pakistan and other Western powers, including some non-governmental organization like the Amnesty international and Asia watch, by their allusions to alleged violations of human rights in Punjab and Kashmir , the government of India thought it expedient in the national interest to setup a commission through a presidential ordinance promulgated on 23 Sep. which became an Act in 1994. Constitution of India has given equal status to women at par with men. Number of provisions in the constitution helps women to improve their status to compete with their male counterparts. Nature has provided some inherent rights to every human being from the inception. Human being is endowed with rights since the stage of fetus. Fetus in the mother womb is the starting point since then human being is guaranteed certain basic right. At the international level conventions on human rights such as universal declaration of human rights covenant on civil and political rights, covenant of economic, social and cultural rights guarantee certain rights to every human being including children. In the particular the declaration of rights of the child which is called as the profound charter on human rights of the children, enumerates the rights of the child.

One of the greatest, in fact revolutionary, developments in the annals of history is that for the first time in international relations a comprehensive list of human rights has been evolved (under the aegis of the United Nations) which every individual, irrespective of his / her origin, religion, race, colour, sex, nationality etc., can claim as a member of human society. During the last six decades the United Nations system has adopted around 100 human rights instruments (such as declarations, conventions, covenants etc.) on various facets of human rights, covering the entire gamut of human relationship. However, it must be noted that the most important among all these instruments are the Universal Declaration of Human Rights (UDHR) (1948), the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966), the International Covenant on Civil and Political Rights (ICCPR) and two optional protocols thereto, providing for the rights of Individual Petition (1966) and aiming at the abolition of death penalty (1989), which together form the five constituent parts of the International Bill of Human Rights. The bill, the first ever adopted in the history of the world has brought the matter of human rights on the agenda of international jurisdiction / action. It is no longer possible for states parties to various international conventions to argue that protection of human rights is simply a matter within their domestic jurisdiction. It is gratifying to note that these two international covenants on human rights – ICESCR and ICCPR – create legally binding obligations for the states,

which have ratified them. These covenants entered into force in 1976. As of July 2007 the former was ratified by 157 states and the latter by 160 states. Besides the two International Covenants, the other important international treaties of human rights which have monitoring bodies include the following :the International Convention on the Elimination of all forms of Racial Discrimination (1965); the Convention on the Elimination of all forms of Discrimination Against Women (1979); the Convention Against Torture and other cruel, inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child (1989) and the International Convention of the rights of Migrant Workers (1990). As of July 2007 these treaties were ratified by 173,185,145,193, and 37 states respectively. The rights protected under the ICCPR include the right to life, freedom from torture and in human treatment, freedom for slavery and slave labour, the right to liberty and security the right of detained persons to be treated with humanity, freedom from imprisonment for debt, freedom of movement and choice of residence, freedom of aliens from explosion, the right to a fair, trial, protection against retroactivity of the criminal law, the right to recognition as a person before the law, the right to privacy, freedom of thought, conscience and religion, freedom of opinion and of expression, prohibition of propaganda for war and of incitement to national, racial or religious hatred, freedom of association, the right to marry and found a family, the of the child, political rights such as right to vote, right to contest elections, right to participation in the governance and to have access to public service, equality before the law and the rights of minorities.

The rights Guaranteed under ICESCR include the right to work, the right to just and favorable conditions of work including fair wages, equal pay for equal work and holiday with pay, the right to form and join trade unions, including the right to strike, the right to social security, protection of the family including special assistance for mothers and children, the right to an adequate standard of living , including adequate food , clothing and housing and the continuous improvement of living conditions, the right to the highest attainable standard of physical and mental health, The right to education, primary education being compulsory and free for all and secondary and higher education generally accessible to all (the progressive implementation of right) and the right to participate in cultural life and enjoy the benefits of scientific progress. It is true that most of the seven core human rights treaties (except the treaty on the rights of migrant workers) have either achieved universal or near universal ratification. But these ratifications by the states are largely a formal, and in some case an empty gesture. This is truer with regard to the Third World States where massive violations of human rights are very common. Now the challenge before the international community is to ensure that the promises and legal obligations contained in these treaties and affirmed through state ratifications are realized in the lives of ordinary people around the world.

21st Century and Human Rights

In the modern days three issues namely “intellectual property rights “environment protection and human rights have become hot topics. Across the world these three issues have attracted much attention and are being the topics of debate. Especially human rights recognition, protection and enforcement have become key issues in the contemporary times. Since the days

of civilization issues of human rights recognition and protection were the focal points. Perhaps recognition and protection of human rights itself is considered as a symbol of civilization. Various conventions at international level recognized human rights and mandated the member states to implement the same. At domestic level constitution and various legislations provided for the recognition, protection and enforcement of human rights in line with the international conventions. The relevance of human rights in twenty first century is very much vided. Not only on the national level but international level also. There is need to protect the rights of every citizens. The human civilization need have the certain human rights for the better development of human life. Thus we can say, Human Rights are rights to which people are entitled by virtue of being humans: they are modern and secular version of 'Human rights. Human rights are universal, fundamental and absolute; universal because they belong to all humans everywhere; fundamental because they are inalienable, i.e. may be denied or violated but cannot be entitled: absolute because they are basic to a genuine living.

Rights have been rightly described as claims of social life without which no man can seek to be his best self. State protects rights and keeps recognizing and maintaining them from time to time.

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