

## **International Dimensions of Human Rights and International Obligations of India**

*Dr. Vikas Chaudhry*

*C.R. Law College,*

*Hisar (Haryana), India*

### **Abstract**

“Human Rights” as the expression goes, means certain rights which are considered to be very basic for an individual’s full physical, mental and spiritual development’. The Charter of United Nations states human rights as all those rights which are inherent in our nature and without which we cannot live as human beings. So, these are also known as natural rights or rights of a man. Sec 2(d) of the Protection of the Human Rights Act, 1993 defines human rights as “the rights relating to life, liberty, equality and dignity of the individuals” guaranteed by the constitution or embodied in the international covenants and enforceable by the courts in India. Man’s long struggle for the realization of the human values and the aftermath of the two world wars, has resulted in the recognition of the importance of the human rights by the States world over. As a result, the United Nations Organization was formed in 1945 human rights have become an established reality since the establishment of the United Nations as U.N lays emphasis on the need for safeguarding human rights which has a direct link with international peace and security.’ In order to fulfill its commitment with regard to Human rights, the General Assembly of the United Nations adopted Universal Declaration of Human Rights on Dec 10, 1948 which is also said to be the “International Bills of Rights”.

*Keywords : Charter of United Nations, Human Rights, Constitution, Liberty, Equality, International Bills of Rights*

### **Introduction**

In furtherance of its main objective, the United Nations High Commissioner (hr human rights in his report at the General Assembly 50th session (1996), stipulates the responsibility of the states in the following words:

- (a) the primary responsibility for the promotion and protection of human rights is with governments,
- (b) the promotion and protection of all human rights is a legitimate concern of the international .community,
- (e) the international community should foster processes leading to a better implementation of human rights and the strengthening of democracy and the rule of law and should take all necessary measures to prevent human rights abuses and to eradicate the gravest human rights violations;
- (d) the international protection and promotion of human rights is effective only if based on the principles of indivisibility and equal value of all human rights.

Apart from the efforts taken by the United Nations, the human rights regime has also drawn it's legitimacy from a number of arrangements like the customary international law, Jus Cogens, multilateral treaties, covenants and commonly accepted human rights instruments, compounded by the informed State practices and values of the contemporary civilizations. The Vienna Declaration, 1993 succinctly stipulates the State obligations towards the implementation of common human rights standards. No Longer, the State remains the only principal actors or subject- matter in international law, the individual has also emerged as complementary subject by abdicating it's classical role as inert object of international law.

On the adoption of the Universal Declaration of the Human rights, steps were taken to adopt the International Covenants that can govern the status of an individual across the globe. Today, the Civil and Political rights of an individual are governed by the International Covenant on Civil And Political Rights (ICCPR), 1966 and Economic — Socio Rights of an individual are given in International Covenant On Economic And Social Rights. 1966 (ICESCR). India has signed, acceded and ratified these covenants in the year 1979 with certain reservations and declarations.

Even though the human rights are accorded all the importance in today's world but still the incidents of its gross violation are reported time and again from all parts of the world. The notion of universality attached to it, is also of no help due to the lack of effective implementation machinery. The political, social and economic disparities existing between the States are also acting as hindrances.

The concept of sovereignty continues to be the formidable obstacle in the observance of Human rights. As the municipal law is given predominance over the international law, so it hinders the protection and promotion of human rights'. How much a nation is bound by international obligation for abiding human rights, the U.N charter itself provides a self- conflicting view. Firstly, Article 55 which stands for "respect for the principles of equal rights and self determination of people, universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion" read with article 56 that requires "all members to pledge themselves to take joint and separate action in cooperation with the organization for the achievement of the purposes set forth in the article 55". The apparently contradictory provision is found in article 2(7) which provides that "nothing contained in the present charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the members to submit such

matters to settlement under the present charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.

The apparent contradiction posed by article 2(7) of the charter could be used by the States as a defense against the allegations of violation of human rights by rendering it as a matter falling under their domestic jurisdiction and thereby negating the provisions of U.N charter for the protection of human rights. However, the competent organs of the United Nations do not consider domestic jurisdiction provision as an insurmountable obstacle while considering issues related to human rights. Indeed these bodies usually proceed “on the assumption that any serious violation of human rights which arouses international concern is not essentially within the domestic jurisdiction of any state”

### **Human Rights in India-the precept**

The Universal Declaration of human rights has a great bearing! impact on the Indian constitution. The makers of the constitution recognizing the sanctity of human rights gave them a sacrosanct place in the Indian constitution from its very inception. A large number of civil & political, social & economic rights have been specifically enumerated under the constitution, various rights although un-enumerated, are yet recognized by the courts, however there are only few rights which are reserved or yet not recognized by constitution as well as by supreme court.

**Specifically Enumerated:** Under the realm of specifically enumerated rights, the human rights have been divided into two parts. Part III of the constitution constitutes of Fundamental Rights which are basically the civil and political rights of the citizens of India and are in pari-materia with the International Covenant on Civil and Political Rights (ICCPR) 1966. Part IV of the constitution constitutes of the Directive Principles of the State Policy (DPSP) which are basically the economic and social rights of the people of

India and are in pari-materia with International Covenant On Economic And Social Rights.

The Preamble of the Indian constitution itself depicts the constitutional commitment to guarantee these rights to the people of India .It declares: WE THE PEOPLE OF INDIA, having solemnly resolved to constitute India into SOVEREIGN, SOCIALIST, DEMOCRATIC, REPUBLIC and to secure to all it's citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief faith and worship;

EQUALITY of status and opportunity and to promote among them all,

FRATERNITY assuring dignity of the individual and the unity and integrity of the nation.

**In Maneka Gandhi v. Union of India** ,the apex court held 'These fundamental rights represent the basic values cherished by the people of this country (India) since the Vedic time and they are calculated to protect the dignity of the individual and create conditions , in which every human being can develop his personality to the fullest extent. They weave pattern of guarantees on the basic structure of human rights and impose negative obligations on the state not to encroach on individual liberty in its various dimensions'.

As Part III of the Constitution contains the "Bill of Rights" for the people of India so following arc the enumerated rights specifically secured by the Constitution of India and are grouped under the following headings:

- I. Right to Equality (Article 14 to 18)
- II. Right to Freedom (Article 19 to 22)
- III. Right against Exploitation (Article 23 and 24)
- IV. Right to Freedom of Religion (Article 25 to 28)
- V. Cultural and Educational Rights (Article 29 and 30)

## VI. Right to Constitutional Remedies (Article 32)

The scope of human rights in the form of fundamental rights is far greater than that of Universal Declaration of Human Rights. While doubts are expressed about the binding nature of rights proclaimed in the Universal Declaration', Fundamental rights enshrined in Part-IJ1 of the constitution are not only binding but are also enforceable through the court of law. Art 32 i.e Right to constitutional remedies, which provides the right to move the Supreme Court for the enforcement of fundamental rights, has been itself declared as a fundamental right.

In order to make the existence of fundamental rights reality and also considering that their availability should not rest at the mercy of government, the Constitution itself has put a restriction on the legislative and executive power of the State.

Clause (2) of article 13 provides

The State shall not make any law which takes away or abridges the rights conferred by this pail and any law made in contravention of this clause shall, to the extent of the contravention is void.

However, the fundamental rights are not absolute. The respective articles containing the rights impose reasonable restrictions as well, which go in the protection of public interest, security of state and social control. Along with this, the fundamental rights have to be read with Directive principles of State Policy (DPSP) (Art 38-51) Which are by themselves not enforceable at jaw. The DPSP are the directions to the State to make such policies which will lead to the achievement of these principles. In other words, these are the duties imposed on the State for safeguarding the interests/ rights of the people. Therefore, there may not be any legal force behind the directives but the highest tribunal- the public opinion- stands behind them.

Promotion of social Order (Art38), Equal justice and Free legal aid Art 39(A), Right to work, education and to public assistance (Art 41),just and humane working

conditions of work (Art 42), living wages for workers (Art 43), Common civil code (Art44), free and compulsory education for children (Art 45), Separation of judiciary from Executive (Art 50) and promotion of International peace and Security (Article 51) are some of the directives which play a poignant role in framing State policies. They basically incorporate the socio-economic rights of the people of India.

Thus, all elaborate expression of the rights under part III and part IV go to guarantee, protect and secure Human Rights.

The Indian Parliament recognizing the importance of Human Rights, has also enacted the Protection of Human Rights Act, 1993. The Act is meant “to provide for the constitution of a National Human Rights Commission, State Human Rights Commission in States and human Rights Courts for better protection of human rights as for matters concerned therewith or incidental there to” –

**Un-enumerated yet Recognized Rights:** These are certain rights which are not specifically enumerated but still the Supreme Court has recognized them by making them a part of the existing rights. The Indian judiciary is conscious of the fact that society does not remain static. With the growth and development of the society many new rights emerge. At the same time, the uniqueness of the Constitution of India is that it has been able to bring the newly claimed and evolved rights within its existing parameters. In this realm, Art 14, Art 19 and Art 21 have been mainly touched upon. These rights emanate from the existing rights. Few such decisions are as follows:

**In Union of India v. Association for Democratic reforms :** The apex court held that the concept of an open government is said to be the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Art 19(1)(a).

**In Olga Teltis v. Bombay Municipal corporation :** The apex court has held that “right to life” incorporated under the Art 21 includes right to livelihood. The court stated

“deprive a person of his livelihood, you shall deprive him of his life” thereby directing the Bombay municipal corporation to provide alternative sites for the resettlement to the evicted pavement dwellers.

**In Satwant Singh v/s Assistant passport officer, New Delhi** : The supreme court held that the expression personal liberty under Art 21 includes the ‘ right to travel abroad and nobody can be deprived of it except by the procedure established by law.

**In D.K Basu v. State of West Bengal**’ striking at Custodial violence , the apex court held that any form of torture cruel or inhuman treatment would fall within the inhibition of Art 21.

**In Hussainara Khatoon v. Home Secretary Bihar** the court while interpreting the “right to speedy trial” as a part the fundamental right to life said that Article 21 states that a person can be denied of his life and liberty only in accordance to the procedure established by law and such procedure should be fair and reasonable. A procedure cannot be reasonable , fair or just unless it ensures a speedy trial for determination of the guilt of the person deprived of his liberty.

**In R.Rajagopal v;State of Tamil Nadu** The Supreme Court held that Article 21 includes in it’s ambit the ‘ Right to Privacy’ i.e the right to be let alone.

Similarly. there are various other rights which are recognized by the Supreme Court as a part of the existing rights.

**Reserved or yet not recognized rights** : There are certain human rights which are though enumerated in the international covenants but the Indian constitution does not include them and the S.C has also shown its inhibition in recognizing them till date. These are those rights which are reserved by the government of India at the time of ratifying the ICCPR and ICESCR in the interest of the nation.

“1. With reference to article I of the International Covenant on Economic, Social and Cultural Rights and article I of the International Covenant on Civil and Political



Rights, the Government of the Republic of India declares that the words ‘**the right of self- determination**’ appearing in [this article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation--which is the essence of national integrity.

“II. With reference to article 9 of the International Covenant on Civil and Political Rights, the Government of the Republic of India takes the position that the provisions of the article shall be so applied as to be in consonance with the provisions of clauses (3) to (7) of article 22 of the Constitution of India. Further under the **Indian Legal System, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State.**

“III With respect to article 13 of the International Covenant on Civil and Political Rights, the Government of the **Republic of India reserves its right to apply its law relating to foreigners**’.

“IV. With reference to articles 4 and 8 of the International Covenant on Economic, Social and Cultural Rights, the Government of the Republic of India declares that the provisions of the said article shall be so applied as to be in conformity with the provisions of article 19 of the Constitution of India.

“V. With reference to article 7(c) of the International Covenant on Economic, Social and cultural Rights, the Government of the Republic of India declares that the provisions of the said article shall be so applied as to be in conformity with the provisions of article 16(4) of the Constitution of India.”

### **Human Rights: Indian Practice**

International covenant on civil and political rights as well as International Covenant on Economic and Social rights of 1966 that came into force in 1976 have binding legal force to the State Parties to them. India signed, acceded and ratified these covenants in 1979 with certain declarations and reservations. Though these covenants

provide a detailed codification of human rights but even prior to them the preemptory norms of jus cogens incorporate and ensure the guarantee of a considerable sections of human rights. The question that arises is, how much India abide by or gives effect to these international obligations.

India follows to a large extent Anglo- Saxon tradition and British practices<sup>4</sup>. India gives effect to a treaty or convention through national legislation. The union legislature, executive and judiciary have the power to interpret a treaty or international instruments, whenever called upon to do so during the course of their business. In the words of Rajiv Dhavan “ human rights treaties stand on a different footing from other treaties precisely because similar rights are enshrined in the constitution”

The Anglo-Saxon common Law approach has been high lightened by the Apex Court in two PUCL cases

**PUCL v Union of India**’ International law today is not confirmed to regulating it relations between the states, Scope continues to extend. Today matters of social concern, such us health, education and economics apart from human rights fall within the ambit of international regulations. International Law is more tgan ever aimed at individuals.

It is almost an accepted proposition of• law that the rules of the customary international law which are not contrary to the municipal law shall he deemed to be incorporated in the domestic order.

Art 51 of the constitution of India directs that the state shall endeavor to inter alia, foster respect for international law and treaty obligations in the dealings of organized people with one another;

**Kesavananda Bharti v. State of Kerala** Justice Sikri, stated that in view of Art 51 of the directive principles this court must interpret the language of the constitution, if not

intractable which is after all a municipal law, in the light of the united nations charter and solemn declaration subscribed to by India.

Today, the prevalent juridical approach shows the progressive growth of international human rights treaty over domestic legal order. It has left behind the orthodox judicial approach which talked about supremacy and primacy of the domestic legal order over the international order. The outdated orthodoxy has been represented by the Apex Court rulings in **Mirza All Akbar v. United Arab Republic** Where the court observed that the covenant on civil and political rights should not be directly enforced.

**Harbhajan Singh v. Union of India** In which it was held that statute prevails if it is found inconsistent with international law. The progressive and liberal interpretation of the covenant vis-à-vis the domestic law has been adopted in **Maneka Gandhi v. Union of India**. The court coined the principle that in the event of a possible conflict between the existing domestic law and the ratified international human rights covenant the liberal interpretation swings between two bipolar ranges- 'dont construct the statute inconsistently with the international covenant' and 'interpret the domestic statute to give effect to the binding covenant'.

In the second PUCL case People 's **Union for Civil Liberties v. Union of India**' The question posed to the apex court was whether parliamentary ratification of treaty is tantamount to legislation, to which the court quoted the statement of Mason, C.J

"The main criticism against reading such conventions and covenants into national laws is one pointed by Mason, C.J. himself viz., the ratification of these conventions and covenants is done, in most of the countries by the Executive acting alone and that the prerogative of making the law is that of parliament alone; unless parliament legislates, no law can come into existence For the present, it would suffice to state that the provisions of the covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our constitution, can certainly be relied upon by courts as facets of those

fundamental rights and hence, enforceable as such. So far as multilateral treaties are concerned, the law is, of course, different and definite. Despite the constitutional commitment and the progressive attitude of the Indian judiciary, India has been repeatedly accused for violation of human rights,

Even after almost 60 years of independence, there are still communal riots and caste wars. The recent of all is Godhara carnage which has taken so many lives and widened the gap between Hindus and Muslims. Child labour is widely prevalent and untouchability is still practiced in some areas. In the 21<sup>st</sup> century, India still remains a male dominant society where male child is preferred and thousands of female foeticide cases are reported each year.

The status of women is not desirable as rape cases, dowry deaths are a regular phenomena. A major chunk of people who are living below the poverty line is deprived of adequate means of livelihood i.e food, clothing and shelter. Even the government is unable to provide them with their basic rights. The idea of equality seems to be a farfetched notion because of the huge gap between haves and have-nots and the acute discrimination prevalent between majority and minority. The Indian judiciary also protects the rights and provides for the needs of the privileged ones. In India, once a case is filed, it languishes for years and by the time it gets decided, the decision or remedy remains of meaning for either party. Though, repeatedly the apex court directs the law machinery for speedy justice but with large number of cases pending in all the courts, it seems that hardly this principle is being practiced. Few recent examples of denial of speedy justice are Jessica Lal case, Best Bakery case, **Priyadarshini Mattu** case, various scam cases like Fodder Scam, Hawala Case etc which are pending in the courts for almost 5 to 10 years, whereas in the celebrated cases of **Maneka Gandhi v/s Union of India** the SC categorically stated that 'justice delayed is justice denied'.

There are large number of under trials locked up in the jails who do not know when their fate will be decided.

### **Conclusion**

The Indian parliament has taken a positive step in safeguarding the human rights. It has enacted the protection of Human rights Act 1993, providing for the establishment of National Human rights Commission and the State Human Rights commission. The functions of the Commissions include inquiry into the violation of human rights either suo motu or on a petition presented by a victim or any person on his behalf, intervening in any proceeding involving alleged violation of human rights pending before the courts and visiting jails etc. The act also provides for the creation of human rights courts for the purpose of speedy trial of human rights violation cases.

A world free from war, terrorism, pollution, poverty, exploitation etc is a distant dream for vast section of humanity.

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