

An Analytical Study of Development of Human Rights and International Law with Special Reference to Position of India in This Context

Mr. Rajesh Rudhra

Ph.d Scholar

Department of Political Science

Maharaja Vinayak University, Jaipur

Supervised By

Dr. Panchu Ram Meena

Associate Professor, Maharaja Vinayak University Jaipur

Co -Supervisor

Dr. J.P. Aggarwal

Associate Professor, LPU, Jalandhar

ABSTRACT

Human rights are linked with human dignity and they determine and define the identity of an individual living in a civilized society. Human civilization is the result of evolution and throughout history human beings struggled to get rights from the law makers to lead a dignified life. The monarch in the ancient times was considered benevolent and justice loving if he made efforts to establish a good society for the peace and prosperity of his citizens. It is unfortunate that with the rise of science and technology the growth of human rights is very slow and the law makers are not very serious about the implementation of the human rights. Before the World War II, people would usually speak of 'Natural rights' or 'Natural Law'. The growth of democratic system in India has led to the growth of human rights also. The government is making serious efforts to create an environment for the development of human rights. Urbanization and the growing class consciousness has promoted fissiparous tendencies in India as many regional groups are propagating separatist activities. The growing unrest in

Kashmir valley and the rise of Naxalite Movement in the backward areas of Orissa and Bihar are examples of violence and gross violation of human rights. The culture of human rights is based on the concept of value of life a right to freedom and a right to properly. From the beginning of human history, man struggled for his existence against nature and for liberty and freedom though these struggles for achieving basic freedom in every society are unique in their respective experiences. Human rights refer to "the basic rights and freedoms to which all humans are entitled. Examples of rights and freedoms which are often thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to work, and the right to education. The preamble of the Constitution clearly describes the values of justice, equality, secularism and cultural pluralism to make a stable democratic society and polity. The effects of international law on the domestic

legal order on various countries of the World are manifold. In countries which follow “monist” school, international treaties can be invoked before or applied by the judiciary. These are so-called self-executing treaties. On the other hand, countries like India follow the “dualist” school of law in respect of implementation of international law at domestic level. Therefore, in India, International treaties do not automatically form part of national law. They must, where appropriate, be incorporated into the legal system by a legislation made by the Parliament.

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Austin observes that the evolution of human rights was the result of the emergence of state headed by a sovereign. In the Vedic age the Hindu kings made dignity special efforts to take care of the dignity and status of the individuals in society. Asoka brought major changes in civil society to facilitate the citizens to enjoy respect, identity and dignity. In England historical evolution of human rights began with the passing of Magna Carta of 1215.

Human Rights and the Constitution of India

The Indian constitution makers took inspiration from the British and American constitutions and are known in the world as one of the most right-based constitutions in the world. Mr. Jawahar Lal Nehru and Bhim Rao Ambedkar were fascinated by the clauses of the Universal Declaration of Human Rights which became the backbone of the charter of the United Nations in 1948. The preamble of the Indian constitution is based on the spirit of human rights as the sections on Fundamental rights and Directive Principle of State Policy clearly highlight the nature of liberty and equality

and justice enshrined in the constitution of India. The citizens of India expect that they should be provided the good environment for their overall development. Rights provide that environment. Rights have been defined as those claims of an individual that are necessary for the development of his/her own self and recognized by state or society. Some of the rights provided by the state and enshrined in the constitution are known as fundamental rights. Fundamental rights are those rights that are enforceable through the court of law. The Indian constitution is based on the theory that guided India’s struggle against British colonialism, which was marked by the violation of civil, political, social, economic and cultural rights of the people. Therefore, after independence the framers of the constitution provided some fundamental rights to the citizens which are enshrined in the part III of the constitution. These fundamental rights are defined as basic human freedom for a proper and harmonious development of personality of every Indian citizen. These fundamental rights apply to all Indian citizens, irrespective of caste, creed, colour, sex, race or place of birth. They are also enforceable by the Indian courts. The rights have their origins in many sources including England’s Bill of Rights, the United States Bill of Rights and France’s declaration of the Rights of Man.

Human Rights and the Constituent Assembly: The Historical Perspective

The makers of the Indian constitution were inspired by England's Bill of Rights (1689), the United States Bill of Rights and France's Declaration of the Rights of Man. Rousseau and other French philosophers had demanded the inalienable rights of man; liberty, equality and fraternity and the French Revolution of 1789 brought about these ideals of human rights. The colonial rule in India was the blackest era in

Indian history. Rowlatt Act of 1919 was a draconian law giving extensive powers to the British government. The British officials were free to arrest, detain and persecute any individual without any Vakil or dalil. They were empowered to conduct warrant-less searches and seizures. People were disallowed to gather or to launch any protest programme and even the law advocated censorship of press. Therefore, the gross violation of Human rights of masses was propelled by the insidious Rowlatt Act of 1919. In response to this the public opposition grew and there was a widespread demand of guaranteed civil liberties and limitations on the powers of government. Prior to this Act, there were Vernacular Press Act of 1878, Indian Council Act, 1892, Indian Council Act 1909 etc, which faced political and public opposition. Lord Curzen ruled from 1892 to 1909 and his rule is marked by the violation of basic human rights of individuals. Mahatma Gandhi, Sardar Patel and Lala Lajpat Rai fought against these draconian laws of the colonial powers.

Another major development during that period was the Nehru Commission Report of 1928. The Commission demanded constitutional reforms for India. The demand for a dominion status for India became active. The political leaders of the Congress party demanded general elections under universal suffrage. The minorities made representation for religious and ethnic minorities and suggested to limit the power of government. It also proposed to protect the fundamental rights of the people, which were denied most frequently by the colonial administration.

Mahatma Gandhi entered in active politics in 1930 and he encouraged the leaders of the Congress to pass several resolutions including the protection of fundamental civil rights and economic-

social rights. For the first time the minimum wage and the abolition of untouchability and serfdom was demanded. The Karachi Resolution demanded the economic freedom with political freedom to end the exploitation of the people. Sapru Committee (1945) recommended the political and civil rights, equality of liberty and security and freedom to practice a religion. When India achieved independence the Constituent Assembly headed by Rajendra Prasad took up a responsibility to frame the constitution and national laws. Dr. Bhimrao Ambedkar became the chairperson of the drafting committee, while Jawaharlal Nehru and Sardar Vallabhbhai Patel became chairpersons of committees and sub-committees responsible for different subjects. The Indian constitution gives fundamental rights to the citizens and puts faith on the human rights of the individuals.

National Human Rights Commission

The year 1993 was a historical day for Indian democracy as on this day National Human Rights Commission was set up under the legislative mandate of the Protection of Human Rights Act. The Commission has made tremendous strides as it has taken various bold decisions to give rights to the Indians and protected the life and property of many people all over India. Precisely the Commission is created on the following ideals:

- 1) Evolution and Theories (Traditional and Contemporary)
- 2) Notion of Human Dignity
- 3) Human Rights and Constitutional Values: Democracy, Rule of Law, Good Governance
- 4) First, Second, and Third Generation Human Rights
- 5) Human Rights in relation to Politics, Culture and Religion



The Commission has been armed through this Act to promote and protect human rights in the country. While enterprising the tasks set out in the Protection of Human Rights Act, 1993, it has noticed several loopholes in the Act over the past few years. Therefore, the commission put emphasis on the need to review and amend the Act of 1993 for the proper and effective functioning of the Commission.[15]

The Commission generally takes up the issues involving cases of human rights violation that are of significance, either through suo moto, or when the civil society organization, the media, concerned citizens, or expert advisers, bring the cases to its notice. It focuses on the protection of human rights to all section of society, particularly the vulnerable or marginalized sections of the society.

A significant increase in public awareness of the work of the Commission has been witnessed. This is partly reflected in the growing number of the complaints of human rights violations, which have been received by the Commission over the past few years. The Commission divides the cases in these following categories: (1) Custodial deaths; (2) Police excesses (Torture, Illegal detention\ unlawful arrest, false implication etc.; (3) Fake encounters; (4) Cases related to Women and Children; (5) Atrocities on Dalits\Members of Minority community\ Disabled (6) Bonded labour (7) Armed forces\ paramilitary forces and (8) other important cases.[16]

Once the Commission receives a complaint from any individual or civil society organizations etc, it asks statements from the concerned government or authority regarding complaint. After receiving the comments from the concerned authority a

comprehensive note on the merits of the case is prepared for the consideration of the Commission. Once this process is completed a detailed directions and recommendations by the Commission are communicated to the concerned government under Sections 18 and 19 of the Act.

A MAPPING OF HUMAN RIGHTS ISSUES

A. Custodial Violence

Human Rights Commission takes serious view of “custody death”, and “custodial rape” Custodial violence has been on the agenda of civil rights groups for over two decades, and reports documenting instances of violence and its systemic occurrence, have been instrumental in the campaigns against custodial violence.

B. Project displacement

Project displacement for the construction of large dams or for power projects have led to protest movements directly involving the affected people. The NBA has utilised strategies and tactics of protest – including *jal samarpan*, human chains, working on the funders and the contractors to withdraw, participating in the proceedings before, and surrounding.

Human rights issues that arise include

- 1) displacement
- 2) the poverty of rehabilitation, and often, the impossibility of rehabilitation
- 3) the impoverishment that results from displacement
- 4) the non-reckoning of cultural and community identity and of rights.

C. The internally displaced due to conflicts

The large-scale internal migration caused by political violence has created classes of internal refugees. During the years of militancy in the Punjab, after the anti-Sikh riots in 1984, and the movement of Kashmiri Pandits out of the valley have provided visible evidence of such migration. While

the violence that preceded the migration has been squarely addressed in human rights terms, the rehabilitation and return of the migrants after displacement appears to have been only on the margins of the human rights movement.

D. Refugees

India has not ratified the 1951 UN Convention on Refugees, nor has it signed the 1967 protocol. The Indian state hosted more than 2,92,000 refugees; which includes more than 16,000 persons from Afghanistan, 65,000 Chakmas from Bangladesh, 30,000 Bhutanese of Nepali origin, 50,000 Chin indigenous people from Myanmar and about 39,000 pro-democracy student activists from Rangoon and the Mandalay region, 1,10,000 Sri Lankan Tamils of whom 70,000 are in camps and 40,000 outside, 1,10,000 Tibetans and around 7000 persons from other countries.⁹

E. Land Alienation

The loss to communities of right over land is widespread, and various movements to recover control over land and related resources have been active particularly in the past decade and a half, though some movements go back many decades. The issue of tribal land alienation was linked with that of displacement.

F. Death Penalty

The civil liberties movement has been consistent in its opposition to the death penalty. For a brief while, there were some sections in the women's movement who supported - either vocally, or by their silence - the imposition of death penalty for rape. This too has been retracted, and death penalty for rape opposed. After the period in the early '80s, when the Supreme Court drew up the 'rarest of rare' rule,²⁵ there has been a downward slide, particularly discernible in the 1990s.

- Multiple death sentences,
- death penalty to minors, and
- death sentence while reversing acquittal

G. Fake Encounters

Fake 'encounter killings', by the police or security forces are seriously taken by the Commission.. In Andhra Pradesh, for instance, the naxalites have been the targets; in Punjab, it was the militant; in Mumbai, it is those who are alleged to be part of the underworld. However, the subsequent period in India is pregnant with blatant violation of human right. Punjab and Kashmir have been the rampant. In November 1995, Mr. Jaswant Singh, Akali human rights activist, pointed out: "In Punjab during the period from 1984 to 1994 about 50,000 persons have been unceremoniously cremated by the police." Amnesty International in its report repeatedly pointed out India for violation of human rights by giving examples. The persons taken in the police custody disappear.

Deoraj Khatri v. State of Bihar case (1) raised the case of Police brutality in which 80 suspected criminals were brutally blinded during Police investigation (Bhagalpur Blinding case). The Supreme Court condemned it as a "barbaric act and a crime against mankind." In Sheela Barse v. The State of Maharashtra case,⁽²⁾ the Court was confronted with the custodial violence against women and it laid down certain guidelines against torture and ill treatment of women in Police custody and jails.

INTERNATIONAL LAW AND ITS OPERATION

India being a global democracy has to comply with the international laws and the foreign policy of India is evaluated with reference to practical position on various issues which impact its stature as a growing global power. Countries like the United States of America (USA), the United Kingdom (UK), Germany, Australia, Japan and the Netherlands provide updates on views of their governments in public international law. This paper provides an in-depth analysis of its actions of executive, legislative and judicial organs in select areas of international law. These are law of the



sea, refugee law, human rights, international environmental law and climate change, This paper provides a theoretical analysis of state practice as an integral element of customary international law, examines India's search for making of an international law, India's views on fundamental definitions of international law and provisions of the Constitution of India which governs Indian state practice at international level.

State practice an essential element of customary international law

State practice is an important source to understand the determination of relevant rules of international law. Article 38 (1) of the ICJ Statute is generally recognized as a definitive statement of the sources of international law. Pursuant to this Article, the Court is required to apply, among other legal sources, international conventions "expressly recognized by the contesting states" and "international custom, as evidence of a general practice accepted as law". Indian Judiciary, though not empowered to make legislations, is free to interpret India's obligations under international law into the municipal laws of the country in pronouncing its decision in a case concerning issues of international law. In this respect, the Indian judiciary has played a proactive role in implementing India's international obligations under International treaties, especially in the field of human rights and environmental law. This paper examines the role of Indian judiciary in the implementation of International law in India in the context of relevant constitutional provisions. P. Anand explains the Western civilizations learn about great Indian traditions of international law and later on reproduced these as their own. (3) Indian judiciary and executive wings of India recognize that international law and global institutions are superior to national ones (4). US academicians and scholars do not look to international

institutions or international community to validate their government's actions or their own. (5). This assumption remains equally valid for India. In many cases India is at odds with international institutions, but its acceptance to the UN remains mostly intact (6). On the contrary, when it has found that its interests remain substantially at odds with international institutions such as the International Criminal Court,²⁴ it has displayed vehement opposition (7).

Constitution of India, international law and state practice

There is a uniform position among academicians and scholars that international law is not part of the Indian Constitution. India's obligations are limited to those under customary international law and applicable binding treaties. Article 51 of the Directive Principles (8) lays down that the State shall endeavor to (a) promote international peace and security; (b) maintain just and honourable relations between nations; (c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and (d) encourage settlement of international disputes by arbitration. Article 51 of the Constitution had its source and inspiration in the Havana Declaration of 30 November 1939. In fact, all principles and norms used in the Havana Declaration have found their way through in Article 51 of the Constitution. The Indian Parliament, under Article 253 of the Constitution, is solely empowered to implement international obligations.

To conclude, human rights of India are closely linked with the international laws since Indian democracy relies on fundamental rights of the individuals. India is a welfare state and the main purpose of our parliament is to enact laws for the peace, justice and prosperity of the citizens of India. All the laws and clauses of



international organizations are given proper cognizance.

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