



## Human Rights And Judicial Process – A Critical Analysis

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### ABSTRACT

*Right to life and personal liberty is the basic human rights of the individual. The Supreme Court of India has acted as guardian of people. Article 21 of the Indian Constitution occupies a unique place .It encompasses a bundle of fundamental rights. The wide dimension of this right now covers various aspects which the founding fathers of the Constitution had not have visualized. The concept of right to life and personal liberty should be examined with reference to development along with judicial interpretation. In this article an attempt is made to realize the spirit of the International Human Rights and constitutional goal. Further, it is examine the right to life and personal liberty in the light of present social change.*

**KEYWORDS : Human rights, judicial process, sustainable development, social change**

### Introduction-

The great Indian Freedom movement reminds the story of struggle against suppression of human rights. The U.N. Charter and International conventions resolved human rights, breaking all geographical boundaries. The "Universal Declaration of Human Rights-1948" proclaims that Human Rights are inalienable. It declares that all human beings are born free and equal in enjoying rights. Through various conventions attention has been focused to end discrimination and cherish human dignity. The founding fathers of the Constitution are well concerned about the Indian socio-cultural condition. They enumerated fundamental rights for the people of India. These rights are most precious carry high value of human dignity. The state is directed to provide protection of various rights. Similarly the Parliament has enacted the protection of Human Rights Act, 1993 in the greater interest of the people in India. Apart from the above, innumerable laws have been enacted and amended to up keep the interest of the people in general. The Supreme Court of India shown rising trend to interpret the law in consonance with the international treaties and conventions. But the ground realities are that often poor engaged in cultivation and rich are harvesting the crops. In this article an attempt is made to evaluate fundamental rights in the light of UDHR.

### CONSTITUTIONAL PHILOSOPHY AND HUMAN RIGHTS:

Indian Constitution envisages the doctrine of human rights. Art.21 guarantees right to life and personal liberty. It ensures human dignity The Supreme Court of India in a catena of cases declared that, Art.21 does not conceive life to provide mere an animal living of man, but a right to live with human dignity<sup>(1)</sup>. In the same breathe Art.3 of Universal Declaration of Human Rights assure that everyone has right to life, liberty and security of person. International covenants are well concerned for effective implementation of liberty, equality and justice. These rights are inalienable, recognized since all the ages and countries of civilized world. Several countries have patented these rights in their respective constitutions. The common conception is that all human beings are born free and equal in dignity and rights. The founding fathers of the constitution recognized these rights in Part-III of the constitution. In Menaka Gandhi's case<sup>(2)</sup> justice Bhagwati (as he then was) observed – "The expression 'Personal Liberty' in Art.21 is of widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have raised the status of distinct fundamental rights and given additional protection under Art.19. The attempt of the court should be to expand the reach and ambit of the fundamental right rather than to attenuate their meaning by a process of judicial construction. The Apex Court declared that, the law must be just, fair and reasonable.

In Chameli singh case <sup>(3)</sup>Supreme Court observed that, in a civilized society the right to live as a human being is not ensured by meeting only the animal needs of man. Right to live implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and convention or under constitution of India can not be exercised without basic human rights. It is the mandate

of the constitution and obligation of state to provide facilities to the poor and tribes, to enable them to come into the mainstream of national life. The right to shelter, therefore, does not mean merely, a right to a roof over one's head. It means more than that, where he may have an opportunity to grow physically, intellectually and spiritually.

### INTERNATIONAL CONVENTIONS AND RESPONSIBILITIES OF STATE :

International convention invoke insight of person, while he analyze the issues often comes in the process of development. Development is highly necessary, to facilitate the quality life of the people. Development activities can raise and expand the life pursuits. However, development has some negative side too. In reckoning the issues of development, the prime consideration should be the "human person". It is also recognized and asserted that the development is inalienable Human Rights and Human persons are the central subject of development. <sup>(4)</sup>It cast responsibility on the state authorities to guide the agencies of development in the appropriate manner. So that the negative impact of development can be safeguarded and human rights can be protected.

The UN Conference ensures that <sup>(5)</sup>issues of development and due regard for human rights are mutually dependent. It is the developmental agencies have to strike a balance between the policy and programme on the sustainability of the human rights. The development agencies have to asses the inter-dependent interest i.e. social, ecological, economic and ethic etc. The state authority must safeguard the humanitarian aspect, before it permits any agency to undertake any development projects. Such duty cast on the state, by the constitution and UN conventions.

### DEVELOPMENT ACTIVITIES AND HUMAN RIGHTS :

It is a recognized fact that developmental activities are impossible without some detrimental impact on the society. Most of the developmental activities have adverse impact on the ecology and vulnerable people i.e. Tribal and backward groups of people. Democratic society like ours seek to believes in equality, Justice and fair play. But unfortunately we are accepting the idea that, we have to live with inequality. In our present society materials inequality has grown to its highest magnitude. In India there is an extreme contrast where one may find that largest number of poor live in India along with the second highest number of billionaires of the world. It is so happened due to liberal agenda followed all over the world. Globalization of finance market created inequality to the great extent. MNCs started marketing culture; where men run after materials.

In the developing countries, idea of inequality became an accepted fact. Our rulers and investors plead their helplessness. Rulers take the ground we are poor and our resources are inadequate. Investors take the plea that Govt. should provide us more concession and basic infrastructure like land; supply of energy etc. Social understanding became dependent on the advanced world. Statesman and economists are reduced to being derived intellectuals. They never rely on

the socio-cultural basement of the society. Rather they advocate the growth at the cost of humanity. Spiritual and philosophical cautions seem to them as orthodox and primitive. They never believe that excessive growth may kill. The nature of growth is always upward, never counts the result. Global warming is the glaring example of such growth. A recent report envisages<sup>(6)</sup> frightening view on the fate and future of the world. Chairperson of the panel Rajendra Pachauri warned that warming would cause serious impact on the life on the Earth. One of the alarming effects is the increasing rate of global sea level rise from 1.8mm a year to 3.1mm a year from 1961 to 1993. Sea level rise has been due to thermal expansion and the melting of glacier, ice caps and the polar ice sheets. As per the report the sea level rise would be 18.89 cm by the end of 21<sup>st</sup> Century. By the 2050s coastal areas, especially heavily populated mega delta regions in South, East and South-East Asia will be at greatest risk due to increased flooding from the sea and rivers.

The Government functionaries turning authoritarian, when some social activist starts movement against non-rehabilitation issues. Narmada Bachao Andolan is a bright example of it's kind. Similarly villager of Karnapura region of Jharkhand are going to be uprooted for coal mining, struggle against the displacement of 186 villages was captured.<sup>(7)</sup> Recent agitation at Nandigram, around SEZs issue is a symbol of inhuman activities. Some leads to basic changes by some perceptions, but statesman or social activist count whole changes in the eye of humanist. In the pursuits of growth, corporate bodies eyeing cheap minerals, labour forces, easy communication and energy facilities. They seldom count the interest of tribal and local people. In brief, the very factors resulting inequalities and individuals are treated like mere shells having lost the emotional depth. As a result, we find very remarkable growth of the old age homes and orphanage etc. in India.

#### JUDICIAL TREND AND HUMAN RIGHT :

Judiciary is empowered to render justice to all. In late seventies, justice Bhagwati argued that, growing inequality in status and opportunity can be bridged. Law is a catalyst, rubicon to the poor to reach the ladder of social justice. Public interest litigation can be an instrument, by which superior courts could be activated to render justice to the timid millions. And the courts would act on behalf of the general public to protect the human rights. During eighties and nineties path-breaking judgments were delivered in favour of the poor to lead dignified life with full humanitarian touch. In several cases<sup>(8)</sup> Apex Court directed Govt. and the state authorities to ensure the human right. Today the poor facing the brunt of the onslaught of liberal economic policies in which the land, water and means of livelihood of the poor is in question. Corporate sector put dialogue with the Govt. for SEZs, mega projects and violates the people's right in the guise of development. When the issues are brought to the court, their response has been dismal<sup>9</sup>. In certain case the apex court held that, Article 21 encompasses much more than economic well-being and includes fundamental human rights.<sup>10</sup>

#### Conclusion:

Human Rights and personal liberties are the lifeline of the Indian people. Universally, Human Rights occupy top priority. Magna Carta reminds us the history of struggle for basic rights of man. Doctrine of waiver has no meaning in our country. Humanity is the principle, which Apex Court of our country has recognized and protected it. The Earth is the beautiful gift of the nature. In the pursuits of development, we have to nourish it to preserve our own. Future generation has many aspirations to make life meaningful. Mental slavery of materialism can't make life meaningful. Right to life has many facets to achieve reasonable standard of comfort and decency.

#### References-

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- (2) Menaka Gandhi Vs. Union of India, AIR 1978 SC 597
- (3) Chameli Singh Vs. State of U.P. (1996) 2 SCC 549
- (4) See U.N. Declaration on Human Rights to Development-1986, Art. 1&2.
- (5) See Article-5, Art.9 of the UN World Conference on Human Rights, 1993 held at Vienna
- (6) "Synthesis Report"- A panel that recently, won the nobel peace prize. 23 Page report involved 2,500 scientific expert reviewers and 1,250 authors as well as policy makers from over 130 countries.
- (7) See-Nai Azadi Udghosh Volume-17 at page-23.

- (8) SC3751(8) State of Maharashtra Vs.M.P.Vashi, 1995 5 SCC 730, M.C. Mehta Vs. Union of India , AIR 1987 SC 1086, Rudal Shah Vs.State of Bihar (1983) 4 SCC 141 etc.
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