

Impact of Universal Declaration of Human Rights on Indian Constitutional Jurisprudence: A Critical Analysis

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*“Awal Allah Noor Upaya, Kudrat Ke Sab Bande
Ek Noor Te Sab Jag Upja, Kaun Bhaley , Kau Mande”*

By Sri Guru Granth Sahib

Abstract

Human rights to which all human entitled, simply because we are human. Our human rights are inalienable and they belong to all of us, whatever our caste, class, race, age, gender, religion or belief, and should not be taken away from us under any circumstances. Human rights are those minimal rights which every individual must have against the State or other public authority by virtue of his being a 'member of the human family' irrespective of any other consideration. In this regard the UDHR has exercised a profound influence upon the minds of men. It is a primary proclamation of the international community's commitment to human rights as a common standard of achievement for all peoples and for all nations. Its message is one of hope, equality, liberation and empowerment. It is a message to all who are committed to freedom, justice and peace in the World. The present paper attempts a critical evaluation of UDHR's background, content and impact, and examines how today the social face of international law is well-focused in the Indian constitutional jurisprudence.

Key words: Human Rights, UDHR, International Community, International Law, Jurisprudence

I. Introduction

The content of UDHR reflects sublime thoughts or philosophical foundation of human rights. The moral force underlying human rights principles demands that all those rights which one possesses or ought to possess by virtue of human being shall be available to every human being. Rights which are based on natural law ideology, justice, utility, personhood, development and social solidarity have found place in UDHR. Not only blossoming of individual personality, but also communitarian or collective development and cultural and intellectual advancement of the society have been the goals set. Each of the seedlings has been developed in an atmosphere of care and in interrelated manner to give an integrated framework of full-fledged rights. It starts with a statement reflecting eternal truth, 'whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world' and 'Whereas disregard and contempt for human rights have resulted in barbarous acts which

have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people.' From this it can be inferred that each seedling of human right should project this spirit and fulfill the underlying purpose to the human beings.

The UDHR has been hailed as the common standard of achievement for all peoples and nations. The UDHR is like "the vast gateway of a temple." Its preamble has been rightly described by Rene Cassin as the forecourt containing the general principles of liberty, equality, non-discrimination and fraternity. They are for columns; first personal rights, second, the rights of the individual in his relationship to the outside world, the community; third political rights and fourth, economic, social and cultural rights. Rene Cassin regards these four columns as surrounded by a pediment linking the individual with the society. The UDHR is an inspiring source for future UN Declaration for the Protection of Human Rights and Fundamental Freedom (1950), American Convention of Human Rights 1969; African Charter of Human Rights refer UDHR in their Preambles. The spirit of UDHR establishes a new basis for relations between all countries. The widest acceptance of this practical and effective universality of values are enshrined in its 30 Articles. UDHR has now become a part of the customary international law. The Declaration recognizes that the inherent dignity of all members of the human family is the foundation of freedom, justice and peace in the world and is linked to the recognition of fundamental rights towards which every human being aspires. Within a year after the adoption of UDHR, The Constitution of India was adopted by Constitution Assembly on 26th Nov 1949. No other document has inspired the oppressed people over the world that the UDHR. The framers of the Indian Constitution were influenced by it.

II. Human Rights: Concept and Definition

The expression 'human rights' cover every aspect of human dignity. Right to live with human dignity includes all the finer graces of human civilization. In Francis' case, Human rights in practice have been redefined to encompass every aspect of dignified human existence and to make every human being an equal member of the human family. The goal is still very far, but the road to it has been marked. Mahatma Gandhi has stated that it has always been a mystery to me how men can feel themselves honored by the humiliation of their fellow beings. The current conception of human rights, like all dominant conception of rights, is the outcome of a political struggle aimed at achieving moral legitimacy. Human rights were conceived as the inalienable rights of all members of the human family, which are inherent in human existence. The concept of human rights is based on the dignity and worth of the human individual. Human rights are the essential for realization of the true potential of every human being. 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. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights, being the birth rights, are, therefore, inherent in all the individual irrespective of their caste, creed, religion, sex and nationality. These rights are essential for all the individual as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their

immense significant of human beings; human rights all also sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

Definitional Interpretations of Human Rights

From the discussion made above, it is apparent that it is difficult to conceptualize human rights. Yet many scholars have attempted to define it in various terms, some of them are as follows:

"Human rights as, those moral rights whose moral ground and generating factors are the same, namely being human in some relevant sense".¹

"Human rights as those minimal rights, which every individual must have against the State or other public authority by virtue of his being a member of the human family, irrespective of any other consideration".²

"Human rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed under the constitution or embodied in the international Covenants and enforceable by courts in India".³

III. UDHR: The Magna Carta of all Humankind

The Universal Declaration, the contemporary Magna Carta of Rights was one of the first major achievements of the United Nations in the field of human rights. The Declaration set for the international community a common standard of achievement. It recognized the inherent dignity and the equal inalienable rights of all people in all nations. The human rights in the form of norms mentioned in the Declaration are fundamental in a moral sense are universal individual, interdependent and interrelated. It is the duty of the States regardless of their social, political and economic systems to promote and protect human rights. Further, the Declaration is an authoritative statement of the meaning of Article 55 of the U. N. Charter, which is law : thus the U. N. member States did reach agreement on a meaning of Article 55 that was relatively more specific. The Declaration has enumerated human rights for all the people. They are common to all cultural relations and adoptable to a great variety of social system. In other words, it has made human rights universal but they are not universally accepted due to political, economic and social limitations. All rights for all people in every country should be the goal of this century.³ The rights movements is required to see that this goal is achieved by all means crossing all barriers. The declaration is deficient in three aspects. Firstly, it is not binding on States as law but rather a U.N. recommendation to States. Secondly, some of its provisions are as general as that of Article 55 of the U.N. Charter. For instance, Article 3 stated that 'everyone has the right to life, liberty and security of person. And thirdly, the declaration offered no means of implementation other than State's goodwill. The declaration has no binding force of a treaty, but its provisions have found a place in basic law and constitution of several countries. India is best example to this.

1. Baier, (Ed.) Chapman, Human Rights, Nomos, XXXIII, New York Press, 1981, P. 19
2. D.D. Basu, Human Rights in Constitutional Law, Delhi: Prentice Hall, 1994, P.5.
3. Section 2 of the Protection of Human rights Act 1993

IV. UDHR and The Indian Constitution

Human rights is a dicta of a civilized society. It should not be a mere constitutional guarantee. Protection and preservation of the rights of the individual and his free access to justice are indispensable constituents of the march of a civilized society. Its emphasis is based on rule of law. Our concept of parliamentary democracy is based on the Westminster Model. The Constitution of India had placed individual as its focal center. Fair play and justice are the sine qua non of the good governance. The absence of arbitrary power is the first essential rule of law. The rule of law prevails over the entire field.

A. UDHR and fundamental rights

India was a signatory to the Declaration. The Indian Constitution adopted by the Constituent Assembly on December 26, 1949, which came into force from January 26, 1950 was greatly influenced by the Declaration. The Preamble of the Constitution used the words 'dignity of the individual' which implied that the worth inherent in the human person was well recognized. Provisions of Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy) bear a close resemblance to the Universal Declaration. Consequently, a number of fundamental rights guaranteed to individual in Part III of the Indian Constitution

Civil and Political Rights

| Universal Declaration of Human Rights | Indian Constitution Part -III |
|--|-------------------------------|
| 1. Right to life, liberty and security of person, (Art. 3) | Art. 21 |
| 2. Prohibition of slavery, slave trade etc., (Art. 4) | Art. 23 |
| 3. Equality before law and non-discrimination, (Art.7) | Art.14 & 15(1) |
| 4. Right to effective Remedy, (Art.8) | Art. 32 |
| 5. Right against arbitrary arrest, detention etc, (Art.9) | Art.22 |
| 6. Right against ex-post facto laws, (Art. 11(2)) | Art.20(1) |
| 7. Right to freedom of movement, (Art.13(1)) | Art.19(1)(d) |
| 8. Right to own property and not to be deprived, (Art.17) | Art.19(1)(f) (Omitted) |
| 9. Right to freedom of thought, conscience & religion, (Art.18) | Art. 25(1) |
| 10. Right to freedom of opinion and expression, (Art.19) | Art.19 (1) (a) |
| 11. Right to freedom of peacefully assembly and association, (Art.20(1)) | Art.19 (1) (a) |
| 12. Right to equal access to public service, (Art.21(1)) | Art. 16 (1) |
| 13. Right to form and to join trade unions (Art.23(4)) | Art-19(1)(c) |

The above chart shows that many of the civil and political rights enshrined in the UDHR also find mention in Part III of the Constitution as fundamental rights. However, there are certain rights which are contained in the Universal Declaration but have not

been expressly mentions in the Constitution. These rights are: Right to be not subjected to torture, or to cruel, inhumane treatment or punishment,' "Right to recognition everywhere as person before the law, Right to privacy, Right to nationality etc. It would not be correct to contend that the above rights have not been incorporated in Indian Constitution, though they do not find express mention in the Constitution these are either subsumed under the existing fundamental rights or have been held to emanate from the existing rights under the theory of emanation. For example, the right to life and personal liberty enshrined in Article 21 of Constitution is of widest amplitude and several un-enumerated rights fall within Article 21, these rights are: Right to go abroad, Right to privacy, Right to legal aid, Right to speedy trial etc.

Furthermore, the Constitution establishes rule of law as one of cardinal principles in the administration of justice. It also sets up independent judiciary to act as the custodian of human rights. Even parliament can't deprive the citizen of his fundamental rights. The Constitution is supreme and sovereign and all the organs of the state, function under the Constitution and are subject to the Constitution.⁴

B. UDHR and Directive Principles of State Policy

The economic, social and cultural rights are reflected in the part IV of the Indian Constitution i.e. in Directive Principles of State Policy. Though these rights are non-justifiable, the directive principles occupies a significant position in establishing a social order for the promotion of welfare of the Indian people.⁵ These rights were regarded as ideals cherished by the preamble that the state shall strive to establish a social order in which justice, social, economic and political, shall inform all the institutions of the national life and it is the duty of the state to apply directive principles in making laws as they are fundamental in the governance of the country. The rights of Indian citizens under Part IV are examined here in the light of UDHR are:

4. Dr. T.R. Subramanya, "The Application of International Law in Municipal Systems: Vol. 48, Indian Journal of International Law, 2008, P. 396

5. Dr. B.R. Purohit, "Indian Fundamental Rights and UDHR Vol. XIV, Central India Law Quarterly, 2001, P.150.

Economic, Social and Cultural Rights

| Universal Declaration of Human Right | Indian Constitution Part-IV |
|---|-----------------------------|
| 1. Right to social security, (Art.22) | Art. 41& 42 |
| 2. Right to work, to free choice of an employment, to just and favourable conditions of work etc., (Art. 23(1)) | Art. 41 |
| 3. Right to equal pay for equal work, (Art. 23(2)) | Art. 39 (d) |
| 4. Right to just and favourable remuneration, (Art.23 (3)) | Art. 43 |
| 5. Right to rest and leisure, (Art.24) | Art.43 |
| 6. Right of standard of living adequate for him and his family, (Art. 25(1)) | Art. 39(a) & Art. 47 |
| 7. Right to education and free education in the elementary and fundamental stages, (Art.26 (1)) | Art. 41 & 45 |
| 8. Right to proper social order, (Art.28) | Art. 38 |

The above chart shows the most of the economic, social and cultural rights proclaimed in the UDHR have been incorporated in part IV of the Indian Constitution. However, the Constitution of India is conspicuous by absence of express mention of certain rights proclaimed in the Universal Declaration such as Right to special care and assistance to mothers and children and some social protection for all children, whether born in or out of wedlock,⁶ Parents rights to choose the kind of education for their children, Right of everyone to freely participate in the cultural life of the community to enjoy arts and to share in scientific advancement and its benefits and right of everyone to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. So in respect of the above rights absence of express mention does not mean that these rights have not been incorporated in Indian Constitution. As a matter of fact the above rights are either subsumed in the existing rights or are part thereof or have been expressed in a little different wording and having a little different scope.'

6. UDHR 1948, Art. 25(2)

V. UDHR and Indian Courts

The founders of the Indian Constitution, it appears were conscious about the content of the Universal Declaration and therefore they gave due recognition to its provisions' and the supreme court of India is also not an exception to this. While referring to the fundamental rights in Part 3 of the Constitution, Sikri C. J., of the Supreme Court in *Khehavanand Bharati v. State of Kerala*⁷, observes:

"I am unable to hold this provisions how that rights are not natural or inalienable rights. As a matter of fact, India was a party to the UDHR ... and that declaration describes some fundamental rights are inalienable"

Gradually, over the years; the role of Supreme Court of India has been commendable in expanding the areas of human rights preponderantly. While interpreting the Indian Constitution harmoniously with the norms laid down in international human rights instruments,' a majority of the cases related to Constitutional matters decided by the apex court in India, have been strongly influenced by the UDHR.⁸

In Ahmadabad Municipal Corporation v. Nabab Khan, Gulam Khan and Other⁹ the apex court considered the provisions of Article 19(1)(e) read with Article 21 of the Constitution of India and Article 25(1) of the UDHR. and held that everyone has a right to standard of living, adequate health and welfare of himself and his family.

In Geeta Hariharan and Another v. Reserve Bank of India,¹⁰ the court declared that:

"the domestic courts are under an obligation to give regard to international conventions and norms construing domestic norms when there no inconsistency between them"

In P. G. Gupta V. State of Gujarat,¹¹ the Supreme Court considers the human right to shelter and rights enshrined in Article 19(1)(e) of the Constitution of India and Articles 21 of the UDHR and CCECR and held that it is the duty of the state to construct houses at reasonable cost and make them easily accessible to the poor. The said principle was found embodied and inbuilt in the Constitution of India to secure socio economic democracy so that everyone has right to life, liberty and security of person. The court also emphasized on Article 21 of the UDHR which

7. AIR, 1973, SC 1461, 1536

8. Vishaka & others V. State of Rajasthan and other (1997) 6 SCC 241.

9. 1995 (Suppl.) 2 SCC 182.

10. AIR 1995.

11. 1995 (Supp.) 2 SCC 182.

envisaged that everyone has a right to social security and is entitled to its realization & become the economic, social and cultural rights are indispensable for his dignity and free development of his personality. Influence of Universal Declaration of Human Rights on The Indian Constitution

Furthermore, in Chairman Railway Board and Others v. Mrs. Chandrimadas,¹² the supreme court of India observed that: *"The Universal Declaration has the international recognition as the moral code of conduct' having been adopted by the general assembly of the United Nations," the applicability of the UDHR and principles thereof may have to be read, if need be into the domestic jurisprudence"* From the above decided cases one can understand the influence of UDHR on Indian courts.

Conclusion

Finally it is concluded that since its adoption, the UDHR has created social pressure for adherence to the human rights values and contributed to the cultural attributes of a society. In the identification of the scope of an unnamed right as part of named right the essential character of the named right and the direct and inevitable links between the two and with

other rights need to be properly taken into account. While the mainstream case law development in India has adhered to this requirement and strategy for a welcome result, in parental choice right cases non adherence to this has caused discomforts. The Indian Constitution also greatly influenced by this declaration and therefore the two but inseparable aspects of human rights, namely the civil and political rights and economic, social and cultural are both reflected in the Constitution of India. The realization of civil and political rights was considered as a goal within immediate reach while the economic, social and cultural rights were regarded as ideals for which the country should strive.

12. 2000, 1 SCC 265.

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