



HUMAN RIGHTS DISCOURSE IN INDIA

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The term “Human Rights” is comparatively recent in origin, but the idea of human rights is as old as the history of human civilization. The new phrase “Human Rights” was adopted only in the present century from the expressions previously known as “Natural Rights” or “Rights of men”. Introducing the concept of Human Rights it can be said that “Human rights are a twentieth century name for what has been traditionally known as natural rights or, in a more exhilarating phrase, the rights of man. The rights of man have been the concern of all civilizations from time immemorial. The concept of ‘rights of man’ and other fundamental human rights were not unknown to the peoples of earlier periods. These ‘rights of man’ had a place in almost all the ancient civilizations of the world.

HUMAN RIGHTS IN POST-INDEPENDENT INDIA

During the freedom movement, with vision and foresight, Indian leaders included Human Rights in their agenda for post-Independent India. Human Rights, the product of historical processes, were quite significant in India’s struggle for independence from the Colonial rule. The Indian political scene witnessed the gradual, yet inevitable, emergence of the normative aspirations of the people. Free India addressed itself to the formulations of Human Rights through the legal instrument of the

Constitution. Political freedom brought into focus the need to change the socio- economic conditions left behind by the Colonial Rule. It was realised that economic stability and enjoyment of individual civil and political rights were inseparable. It is perhaps in this background that the wise founding fathers of Indian Constitution had the economic and social content of freedom in their minds. The tryst to make the India's Constitution a viable instrument of the Indian People's salvation, and to secure all persons' basic human rights, is implicit from the preamble promise, fundamental rights, directive principles, and various other provisions of the Constitution.³ Most of the Articles of the Universal Declaration of Human Rights, 1948 and two international covenants are building blocks of our constitutional framework.⁴ Though the Constituent Assembly was primarily concerned with the welfare of masses, yet there was considerable emphasis on the ameliorative role of the State. Strictly speaking, the promulgation of the Constitution by the people may be said as a landmark in the development of Human Rights Jurisprudence in India. The Preamble, Fundamental rights and the Directive Principles of State policy together guarantee the basic Human Rights for the people of India. To quote Granville Austin: "The Constitution was to foster the achievement of many goals. Transcendent among them was that of social revolution. Through this revolution would be fulfilled the basic needs of the common man, and, it was hoped, this revolution would bring about fundamental changes in the structure of Indian society".

NOMENCLATURE OF HUMAN RIGHTS

The struggle for Independence was over by 15th August, 1947. But the attainment of the Independence was not an end itself. It was only the beginning of a struggle, the struggle to live as an independent nation and, at the same time, establish a democracy based on the ideas of justice, liberty, equality and fraternity. The need of a new Constitution forming the basic law of the land for the realisation of these ideas was paramount. Therefore, one of the first and foremost tasks undertaken by independent India was framing of a new Constitution. Thus, the preamble concisely sets out quintessence of human rights which represents the aspirations of the people, who have established the Constitution. The Preamble to the Constitution is of extreme importance and the Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble. The wise founding fathers of our National Charter have

given a detailed list of the human rights and incorporated them in the form of Fundamental Rights and Directive Principles under Part III and Part IV of our Constitution.

These rights have been classified as under

I. Right to Equality

- A. Article 14 - Equality before law
- B. Article 15 - Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth
- C. Article 16 - Equality of opportunity in matters of public employment.
- D. Article 17 - Abolition of Untouchability
- E. Article 18 Abolition of titles.

II. Right to Freedom

- A. Article 19 - Protection of certain rights regarding freedom of speech etc.
- B. Article 20 - Protection in respect of conviction for offences.
- C. Article 21 - Protection of life and personal liberty.
- D. Article 22 - Protection against detention in certain cases.

III. Right against Exploitation

- A. Article 23 - Prohibition of traffic of human beings and forced labour.
- B. Article 24 - Prohibition of employment of children in factories, etc.

IV. Right to Freedom of Religion

- A. Article 25 - Freedom of conscience of free pursuit of profession, practice and propagation of religion.
- B. Article 26 - Freedom to manage religious affairs.
- C. Article 27 - Freedom as to payment of taxes for promotion of any particular religion.
- D. Article 28 - Freedom as to attendance at religious instruction or religious worship in certain educational institutions.

V. Cultural and Educational Rights

- A. Article 29 - Protection of interests of minorities.
- B. Article 30 - Right of minorities to establish and administrate educational institution.

VI. Right to Constitutional Remedies

- A. Article 32 Right to Constitutional Remedies. The incorporation of a formal declaration of Fundamental Rights in Part III of the Constitution is deemed to be a distinguishing feature of a democratic State.

These rights are prohibitions against the State. The State cannot make a law which takes away or abridges any of the rights of the citizens guaranteed in the Part III of the Constitution. It must, however be mentioned here that Fundamental Rights are not absolute rights. They are subject to certain restrictions. What is true is that our Constitution tries to strike a balance between the individual liberty and the social interest.

Similarly, the Directive Principles of State Policy enshrined in Part IV of the Constitution set out the aims and objectives to be achieved by the States in the governance of the country. Unlike the Fundamental Rights, these rights are not justifiable. If the State is unable to implement any provisions of Part IV, no action can be brought against the State in a law court, yet the State authorities have to answer for them to the electorate at the time of election. The idea of a welfare State envisaged in our Constitution can only be achieved if the States endeavour to implement them with a high sense of moral duty.

In analyzing Human Rights discourse in India and South Africa, one must move into account of two important differences. First the Indian constitution, a proud colonial one, was conceived and drafted before the adoption in 1948 of the UDHR, identified as the onset of the modern international human rights movements. Drafted some fifty years later, the South African constitution of 1996 emerged when the hegemonic influence of the modern human rights movement was at its peak, after an internationally scripted normative constructional framework had evolved.

The Second factor that accounts for differences between the two countries in the radically divergent process by which they were forged. Constitution making in India was the final State of a protracted freedom movement; the actual drafting process was dominated by elites of the Indian National Congress (INC), as mass based political party that was the Vanguard of the National movement and that, due to the emergencies of the time, allowed for little public participation. This article is a comparison of human rights discourse in two countries: in the angle of a comparison of two constitution one conceived and drafted before the Universal

Declaration, the other sculpted long after its inception. The inspirational impact of the UDHR and international human rights law is a dominant theme in the mainstream literature on Post-World War II. Constitution, including the Indian Constitution.

However, little attention has been given to India's role in the making of the UDHR. This Chapter comprises three parts and in this chapter, I briefly present the similarities and the differences in the human rights discourse between two countries and their constitutions that make a comparative study meaningful. In article at the preliminary stage, I examine the genesis of the human rights discourse during the British colonial period, post independence period of the Indian constitutional and underscores the efforts that India's nationalist leaders made to mobilize broad popular support for resisting the British administration and to initiate fundamental political and social change. I also examine India's actual and elitist constitution makers who nevertheless made this process more participatory and accommodative.

I too examine the making of the Bill of Rights of both constitutions, highlighting the influence of the Indian Constitution and the vibrant jurisprudence that has been covered around it on the content and interpretation of South Africa's Bill of Rights. I have already showcased the Indian and the South African constitution for their motivation, arguing that there exists two torts improve upon the older models, and that, in particular, the Indian Constitution has contributed to international human rights law. As we have seen, far from influencing the Indian constitution, the UDHR an embodiment of international human rights law that draws the link between social conditions and the enjoyment of civil and political rights was itself shaped in part by the practices of post colonial Indian and socialist contribution also. Economic and social rights typically are not considered to be within the core of constitutionalism and few States have been inclined to enshrine them in their national founding charters, even though the link between social conditions and the enjoyment of civil and political rights is one of the salient themes of UDHR. India's constitutional framers, however, chose to recognize socio-economic rights in their constitution in the form of Directive Principles whereas went so far as to incorporate a list of directly enforceable socio economic rights into its constitution.

The Indian constitution making processes took place amidst radically different international political settings. Far from condemning colonialism, international law was central

to its development. Therefore India's liberation was primarily the product, not of International pressure, but of a uniquely waged, prolonged, local anti-colonial movement leveraged by the cataclysmic effects of World War-II. Within the last seventy years, apartheid collided with the growing international human rights standards that characterized as a crime and ostracized its practitioners until at last it collapsed under its own weight.

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