

# HUMAN RIGHTS

## Human Rights Day - 10th December

*Justice N. K. Jain\**

"It has always been a mystery to me how men can feel themselves honoured by humiliation of their fellow beings."

"There is a higher court than the court of justice and that is the court of consciousness. It supersedes all other courts"

- Mahatma Gandhi

"The essence of all morality is this: to believe that every human being is of infinite importance, and therefore that no consideration of expediency can justify the oppression of one by another. But to believe this it is necessary to believe in God."

- R. H. Tawney

"We almost all accept ..... that human life in all its forms is sacred ..... For some of us, this is a matter of religious faith; for others, of secular but deep philosophical belief."

- Ronald Dworkin

### THE IDEA

1. The central idea of various international human rights documents is that "there is something about each and every human being, simply as a human being, such that certain choices should be made and certain other choices

rejected; in particular, certain things ought not to be done to any human being and certain other things ought to be done for every human being." The universal Declaration of Human Right (Article 2) says "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

### THE ORIGIN

2. The concept of human rights is as old as ancient concept of "Natural Rights" based on natural law. The expression "Human Rights" is of recent origin emerging from international conventions and charters. The expression "Human Rights" is to be found in the charters of United Nations adopted at San Francisco on 25 June, 1945. The preamble of this charter declared that United Nations shall have for its object, inter alia, "to reaffirm faith in fundamental human rights." Article 1 states that the purposes of United Nations shall be, among others, "to achieve international cooperation ..... in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion....."

### THE DEVELOPMENT

3. The effect of Second World War compelled the international community to codify rules to protect human rights and the first charter of United Nations which came into force on 24 October, 1945 recognised that human rights have an

international dimension and that they are no longer solely a matter falling within the exclusive jurisdiction of a State. This charter gave legal authority to United Nations to embark upon codification of human rights and the words first international human rights document viz., Universal Declaration of Human Rights, 1948 came to be adopted on 10 December, 1948 in the form a resolution passed by the United Nations General Assembly. It consists of 30 articles. Article 2 to 21 of the Universal Declaration of Human Rights includes freedom from racial discrimination, the right to life, liberty and security to the person, freedom from slavery, freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom from arbitrary arrest, detention, the right to a fair and public trial, freedom of opinion and expression, right to own property, freedom of thought, freedom of movement and residence.

Articles 22 to 27 of the Universal Declaration of Human Rights such as Right to Social Security, Right to Work and Protection against Unemployment, Right to Rest and Leisure, Right to a Standard of Living adequate for Health and Well being of the self and family, Right to Education belong to the second period in point of time. Finally, the third generation of rights - i.e. Right to Peace, Right to a Healthy and Balanced Environment, Right to Humanitarian Disaster Relief, Right to participate in and benefit from the common heritage of mankind, Right to Political, Economic, Social and Cultural self determination, and then Right to Economic and Social Development - all these rights commonly called collective rights came to be recognized in the later half of 20th Century.

It was during second half of the 20th century that human rights jurisprudence began to develop very fast. Number of international conventions came into existence covering economic, social and cultural rights of the people living in this world. In United Kingdom there is no written constitution and consequently there is no constitutional guarantee for human rights. But, scholars like Dicey have maintained that human rights are protected in U. K. by a representative parliament and by judges having profound regard for principles of liberty which have been evolved from case to case by the Courts themselves.

We in India are fortunate to have a written constitution, and fundamental rights that are guaranteed to every citizen of India are nothing but evolution of human rights in course of time into fundamental rights. Therefore, in our country, Courts have always safeguarded fundamental rights of the citizen and as the watchdog of the Constitution, the Courts ensure that any State action including legislation, which violates or is inconsistent with a fundamental right is struck down because the constitution is the fundamental law of the land.

The Supreme Court in the famous case of Golaknath vs. State of Punjab said that fundamental rights are the modern name for what have been traditionally known as "natural rights". Since natural rights are the offshoot or natural law and since the rules of natural law are of universal application, natural rights are inherent in every human being in all ages and in all times.

"Law, as administered by the courts, is really a dynamic instrument fashioned by the society for the purpose of achieving harmonious adjustment of human relations by elimination of

social tension and conflict."

However, with the passage of time, human rights came to be interpreted having regard to International Bill of Rights which refer to (i) Universal declaration of Human Rights (1948) (ii) International Covenant on Civil and Political Rights (1976) and (iii) International Covenant on Economic and Socio Cultural Rights. From these three bills of rights which actually form the touchstone for implementing human rights provisions, several other covenants and Acts flowed and one such Act is "The Environment (Protection) Act, 1986 which has its origin in the U.N. Conference on Human Environment held at Stockholm.

### **Environmental Protection**

A close look at the history of origin and development of human rights will reveal in un-mistakable terms that Environmental Law in its present condition is an attempt to bring into play the human rights concept. This has been achieved in our Country by including fundamental rights in Chapter III and Directive Principles of State Policy in Chapter IV of the Constitution. Therefore, human rights have played a fundamental role in protecting the Environment.

### **True source of Environmental Protection**

The judicial trends during last two decades has shown that Articles 21, 47, and 48-A of the Constitution have received multi dimensional interpretation in as much as the whole body of case law on Environmental Protection can be traced to these important articles. Human Rights having found its place in the chapter on Fundamental Rights and in the chapter on Directive Principles of State Policy of our Constitution, has ultimately led

to protection of environment to a great extent and our Hon'ble Supreme Court has played a pivotal role in ensuring that Environmental Rights flow from the human rights. Now we have a body of Environmental Rights covering various spheres of human activity. Most important among them are Freedom from Pollution, Protection and Preservation of Air, Soil, Water, Sea, Flora and Fauna, Highest attainable standard of Health, Safe and Healthy Food and working Environment, Adequate Housing and Living conditions.

The Indian Penal Code, 1860 contains a detailed catalogue of public nuisance offences in relation to air and water pollution. Sec.133 of the Code of Criminal Procedure, 1973 permits an individual or a group to seek conditional order for removal of public nuisance. Under Sec.91 of Civil Procedure Code, 1908 two or more persons with the leave of the Court may seek similar relief in case of public nuisance. Order I Rule 8 of Civil Procedure Code permits class action suits where numerous members of a class have the same interest in the suit. Article 226 of the Constitution gives power to the High Court to review administration action - Essentially with regard to implementing Environmental standards. Several labour legislations like Factories Act ensure environmental protection.

In Francis Mullin vs. Union of India (AIR 1981 S.C. 746), the Supreme court held that the right to life was not limited to the right to "mere animal existence, but include a prohibition upon torture and protection of every limb and human faculty." New interpretation of Articles 21, 32 and 226 led to the expansion of scope of fundamental rights, to take into its fold even the Directive Principles and today, environmental rights

like (i) Right to Livelihood, (ii) Right to roads in remote areas, (iii) Right to potable water etc., among others.

### **Human Rights Commission & its Functions**

The protection of Human Rights Act, 1993, (Act No.10 of 1991) came in to existence on 12 September, 1993. As per the preamble, the act is to provide for Constitution of National Human Rights Commission, State Human Rights Commission in the State for better protection of Human Rights and for the issues connected therewith or incidental thereto.

National Human Rights Commission was established under the Protection of Human Rights Act on 12 October, 1993. Section 21 of the Act deals with Constitution of the State Human Rights Commissions and section 36 deals with the matters not subject to the jurisdiction of the Commission. In exercise of power conferred by Sec. 21 (a) of the Act the Government of Rajasthan constituted the Rajasthan State Human Rights Commission. The Commission is an autonomous and independent body with all powers of civil court and authority to intervene award compensation for wide mandate and can monitor the implementation of the recommendations.

The Commission can initiate enquiry suo moto or on complaint by victim or any other person on his/her behalf for violation of human rights, abetment thereof or negligence in prevention of such violation by the public servant. It can intervene in any proceedings involving any allegation of human rights pending before the court, with the approval of such court. It can visit Jails, Institutions, Government offices, with prior intimation for detection of violation of human rights. It will also act for

spreading human rights literacy among various sections of the society through publications, media, seminars and other available means. It can also take assistance, help and cooperation from NGOs in promoting awareness of the safeguards available and encourage the efforts of such NGOs and other Institutions working in the field of human rights.

The Rajasthan State Human Rights Commission was established in March, 2000. The Human Rights Commission is supposed to be an institution with the responsibility of promoting and protecting the human rights of the people of the State, thereby fostering an administration for good governance.

The Human Rights Commission is neither a parallel body nor established to dominate any institution or Government body or agency. It is an autonomous and independent body working for betterment of human rights and is concerned about violation of such rights. Human rights are equally available to every individual and needs to be safeguarded as per the charter of U.N. and as per our Constitution and the Act. The Government is duty-bound to see the welfare of the public at large. The State Human Rights Commission is only to facilitate and help the Government to discharge its duty of good governance and to promote the maintenance of the dignity and worth of human being. In order to avoid the violation of human rights it is imperative to provide quality service to the people of the State which is the ultimate object of a Welfare State as enshrined in the Directive principles of the Constitution. It is not only the Government which has to discharge its responsibility. Individuals, intellectuals, human rights activists and NGOs working in the field of human rights have to work towards arresting the graph of human rights violations. Only the

paradigm shift in thinking will help counter such human rights violation.

It may also be noted that some important and necessary amendments in the Act, as suggested by NHRC, on the basis of recommendations of High Level Committee headed by former Chief Justice of India Mr. Justice A. M. Ahmadi are pending consideration before the Government of India.

Welfare of the people is a pre-condition for the existence of a Government. The august presence of the dignitaries to observe this Human Rights Day shows that they are deeply concerned for the development of the State vis-à-vis the welfare of the people of Rajasthan and protection of their human rights.

In the end I would like to submit that if a citizen does not oppose injustice and crime then he is indirectly encouraging them. Therefore, all citizens should perform their duties earnestly with more humbleness and more reasonableness towards human beings with a touch of humanity. The Commission has been functioning for better protection of human rights as mandated in the Protection of Human Rights Act. On this day let us rededicate ourselves to make human rights a fact of life and not an illusive tantalising hope for the humanity.

□ □

\* Chairperson, Rajasthan State Human Rights Commission and Former Chief Justice of Madars & Karnataka High Court.

## क्या आप चाहते हैं कि आपके पट्टिवाद/शिकायत पट्टि आयोग द्वारा शीघ्र प्रभावी कार्यवाही हो?

यदि हाँ, तो कृपया अपने परिवाद/शिकायत में यथासंभव निम्न सूचना अवश्य अंकित करें :-

- (क) पीड़ित व्यक्ति का नाम, पिता/पति का नाम, जाति, निवास का पता/गाँव/शहर, डाकघर, पुलिस थाना, जिले सहित।
- (ख) जिस व्यक्ति/अधिकारी/कार्यालय के विरुद्ध शिकायत है, उसका पूरा विवरण।
- (ग) शिकायत/घटना/उत्पीड़न का पूरा विवरण (घटना, स्थान, तारीख, महीना, वर्ष सहित।
- (घ) घटना की पुष्टि करने वाले साक्षियों के नाम-पते, यदि ज्ञात हो तो।
- (ङ) घटना की पुष्टि करने में दस्तावेजी सबूत, यदि कोई हो तो।
- (च) यदि किसी अन्य अधिकारी/कार्यालय/मंत्रालय को शिकायत भेजी हो तो उसका नाम एवं उस पर यदि कोई कार्यवाही हुई हो तो उसका विवरण।
- (छ) क्या आपने पूर्व में इस आयोग या राष्ट्रीय आयोग में इस विषय में कोई शिकायत की है? यदि हाँ, तो उसका विवरण एवं परिणाम।
- (ज) क्या इस मामले में किसी फौजदारी/दीवानी/राजस्व अदालत में या विभागीय कोई कार्यवाही हुई या लम्बित हैं? हाँ, तो उसका विवरण।

नोट : कृपया परिवाद/शिकायत पर हस्ताक्षर/अगुष्ट चिन्ह लगाना नहीं भूलें।

परिवाद/शिकायत अध्यक्ष/सचिव, राजस्थान मानवाधिकार आयोग, जयपुर के पते पर भिजवाएं।

### आयोग का संगठनात्मक संरचना

1.	न्यायमूर्ति एन.के. जैन	अध्यक्ष
2.	न्यायमूर्ति जगतसिंह	सदस्य
3.	श्री धर्मसिंह मीणा	सदस्य
4.	श्री पुखराज सिरवी	सदस्य
	श्री गिरीराज सिंह	सचिव

आयोग का प्रमुख कार्यकारी अधिकारी आयोग का सचिव है। आयोग के अन्वेषण कार्य के लिये महानिरीक्षक स्तर का एक पुलिस अधिकारी नियुक्त है।

### सम्पर्क सूत्र :

राजस्थान राज्य मानवाधिकार आयोग, जयपुर

टेलीफोन : 0141-2227868 (अध्यक्ष)

2227565 (सचिव), 2227738 (फैक्स)।

# HUMAN RIGHTS

Human Rights Day - 10th December

न्यायमूर्ति एन.के. जैन  
चैयरपर्सन



राजस्थान राज्य मानवाधिकार आयोग  
एस.एस.ओ. बिल्डिंग  
शासन सचिवालय, जयपुर

# HUMAN RIGHTS

Human Rights Day - 10th December

न्यायमूर्ति एन.के. जैन  
चैयरपर्सन



राजस्थान राज्य मानवाधिकार आयोग  
एस.एस.ओ. बिल्डिंग  
शासन सचिवालय, जयपुर