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An Analysis of the Indian Constitution in Human Rights Perspective

DEEPAK B.D.¹

ABSTRACT

The Basic right which is essential for the very existence of human beings in this world is human rights. These rights are “sine qua non” and inalienable in nature, and even the king or the crown cannot take back these rights, and it cannot be relinquished by the individual himself. The Indian Constitution was drafted subsequent to the implementation of Human Rights declaration, so most of these provisions are incorporated in the Indian Constitution as Fundamental Rights. It is to say that several provisions of both the UDHR and Constitution are similar in nature, so the higher judiciary too taken a similar view in dealing the cases of fundamental right as basic human right. The Human Rights charter states ‘that everyone is free during their birth and entitled with similar protection of dignified right’, which specifically enumerates that the abolition of slavery and bonded labour system and the word ‘equality’ denotes the abolition of caste system and untouchability. The word ‘dignity’ highlights equal treatment/preference by way of equal treatment before law and similar applicability of all law by way of dignified life as enshrined in the Indian Constitution. This is evident that the clauses and Articles of the India’s Constitution and the UDHR are one and the same, which specifically protects the rights and interest of the individuals. The dignified life is the one which differentiate the human and animals. Even the prisoners, convicts and war & political offenders are to be treated with dignity. The prisoners are not entitled for right to liberty but are provided with the right to dignified life even inside the prison. The only uniqueness between the fundamental right and a human right is that the former can be suspended by the law makers or the parliament but the later cannot be taken back or curtailed by anyone.

Keywords: Dignity, Fundamental right, Human right, Indian Constitution, UDHR.

I. INTRODUCTION

Each and every individual in this world deserves some rights and without which their existence will be difficult. The rights which are basic and essential are also called as human rights or natural or basic rights of the humans, without this the existence of their survival will be not possible, earlier it was not considered, but now in the current era, they have become the corner

¹ Author is an Assistant Professor at Dr. Ambedkar Global Law Institute, Tirupathi, Andhra Pradesh, India.

stone of the society.² The human rights ideology are now a familiar one, but before the enactment of “Bill of Rights”, they are alien concept and no one is aware of it and cared about it. The need for such a right and the protest for it has started only because of the intolerable and severe inhuman act done by the ‘Crown’ and the ‘Feudal Lords’ against the subjects, i.e., the persons residing in the territory and who came for trade and other related activities. It had not stopped to this extent but also the people who does not have any relationship with the territory like the sailors, travellers and persons accompanied with the traders were also subjected to this inhuman treatment. The acts such as the over imposing of the taxes, tolls, fees, fines and unwanted & unnecessary forfeiture of the property, low wages, additional working hours and human rights violation such as the harassment by the soldiers and other officials upon the people, have also occurred.

These had at one point of time made the subjects to react and agitate against the king and the crown. People across the kingdom and kingdom under the king’s rulings were involved in violence, bloodshed, and riot have taken place everywhere and the King John monarch of England was forced to leave the throne. So, he decided to sign the peace agreement or a compromise draft with the rebels and barons, by providing some powers to the church and certain rights to the people and reducing the taxes and reducing the military atrocities against the people. This draft document has later named as the “Bill of Rights” and in future gained its advantage as ‘Magna Carta’. This is one of the historical turning point with regard to the evolution of human right’s charter which high lightened the importance of democratic governance and rule of law and entitlement of fundamental liberties to the people. Which had atlast acting as a living document which protects the equity, justice and fairness in the administration and execution of laws.

II. HISTORICAL EVOLUTION OF HUMAN RIGHT

Evolution of human right has a great significant history, it contains several pain, sufferings and untold sorrows faced by the people across the world. Not only the people, the offenders detained in prisons, war prisoners, political prisoners, women and children were subject to torture and cruelty both by the government due to the act of the executives, and also due to the evil consequences of war.³ To stop the evil consequences of the war and the sufferings of the people, several agreements and instruments have been signed during the war and after the war. But it had all ended in vain after another war declare between the same parties or by the party who

² MP Jain, *Indian Constitution Law*, Lexis-Nexis Publishers India, 6th Edition, 2010, P- 81.

³ B.P. Singh Sehgal, *Human Rights in India: Problems and Perspectives*, Deep & Deep Publications, 1999., P- 84.

sign the peace agreements. The best and known example is the failure of the league of nations. It was initially started for the establishment of peace across the world and to stop war, but the pity, is that the countries who were the member to the league were started war against themselves and other non-members.

Even though the Magna Carta or the Bill of Rights were called as the 1st human rights charter, was adopted and accepted by the countries, whether it had stopped the war or the consequences of the human rights violation, the answer towards is negative. Though the charter had not stopped the war or violence in the world but set a foundation for the origination of the concept of fundamental rights, which is now protecting against all violence against humans. French revolution has paved way for demanding the rights and freedom from the king and the royal families, who had misused their sovereign immunities against their subjects. The people reacted against them and the kings and the members of the royal family were chased by the people and chopped them in the 'Guillotine Machine'.

Whether at this point of time the in human act of human rights violation has stopped, no it continued in one or the other form. The modern and the advanced version of the human rights violation had more seriously taken place during the period of world war-I & II. The unknown concept of genocide has occurred, which means killing the people who belong to a particular race, origin or a religion. On one side the killings done during the war against the innocent people or the resident of the village who does not involve in the war, by dropping bombs in the planes and on the other hand people who were captured by the soldiers of the winning state killed them by enjoying.

After the completion of the war, the soldiers of the victory state involved in the act of inhuman and cruel activity against the people and they were used as slaves. To stop the war and to establish peace across the world, and to bring the normalcy of the effect of the 2nd world war, an organisation was formed by the nations called as the United Nations. At the initial point of time there were only few members, now more than 193 countries were members to it. The members have pledged themselves to stop war and not to involve in the inhuman act of human rights violation, and interfere and take actions against the member and other non-member countries for their act of human rights violation. The administration and maintenance of peace has been vested with the UN secretariat and the Security Council headed by the Secretariat General.

III. CONSTITUTION OF INDIA AND HUMAN RIGHT

Human Right and Constitution are soul and body of a man, one cannot live without the other.

Human rights can be effectively implemented with the support of the supreme law of the law, the Constitution and Constitution will be more strengthened with the incorporation of the human right provisions within it.⁴ The basic human rights which are essential to the people are included by the forefathers of the nation who drafted the Constitution as Fundamental Rights.⁵ As they thought that, if they have been backed up by some strong legal protection, it can not be disturbed by the law makers who amend it for their whims and fancies.

The main advantage or a gain is that the fundamental human rights cannot be violated or breached at any point of time, it is also added with a non-obstacle clause by directing the state, that “state shall not make any laws which takeaway or violate the fundamental rights”, if it do so then the law will become void in strict sense, and another check is that if these rights are violated then the ‘right of the individual to move to the court and get remedy’ is also a provision as fundamental right.⁶

There is always a check and balance in the constitution for its effective implementation and beneficial to the subjects. Here the word subject includes both the citizen and non-citizen, again they are divided in to resident and non-resident. The citizen may be resident or non-resident and non-citizen may be a resident. The violation of human right and the locus to approach the court is a wide concept and applicable to the subjects who have been affected by the inhuman at against them. The other provision which is expressly described in the constitution is the “state shall separate the judiciary from the other organs of the state, i.e., executive and the legislative”, for the free and fair justice.⁷

One may wonder after looking the Constitution of India, that political and socio-economic justice all the three have been incorporated in the parent law of the state, much early in the 1950. The freedom fighters who participated in the freedom struggle movement have experienced themselves the act of inhuman and human rights violation during the British rule in India. They have been subject to torture and cruelty and faced the harsh and degrading treatment. Due to which they have suffered a lot and faced untold sorrows and suffering and many had lost their lives and property. During the British Raj, if any one involved in the freedom movement their wealth had been taken by the crown, their economic right had violated to a larger extent.

After independence they become the political leaders and among them some become the parliamentarian and the legislatures who realised the pain and sufferings, so they thought that

⁴ V.N. Shukla, Constitution of India, EBC Publishers, 13th Edition, 2019, P- 48.

⁵ P M Bakshi, The Constitution of India, Universal Law Publishers, 14th Edition, 2017, P- 35.

⁶ Art. 13, Constitution of India, [www.Indiacode.gov.in](http://www.indiacode.gov.in).

⁷ Art. 50, *ibid*.

India needs a special law, which should be supreme and human right provisions should be incorporated in it, also cannot be changed according to the whims and fancies of the ruling government. This resulted in the formulation of the constitution drafting committee and then the birth a baby, Indian Constitution and now this constitution has become the integral part of the people. Several amendments have been made to it, but it has additionally strengthened the human rights. The best example is the right to education was inserted as a fundamental human right in the later part, and several rights have been added to the Art.21, the judicial interpretation have also widened the scope of liberty and life of people. Due to judicial intervention various liberties and rights were made to recognise as basic human right, abolition of unlawful arrest, arbitrary detention, custodial torture, false cases, delay in conducting trial, denying the bail are monitored by the Higher Judiciary as it is the guardian of the constitution.

IV. CONSTITUTION OF INDIA AND FUNDAMENTAL RIGHTS

British rule over India, had taught us several lesson, many of us still remember the scars of the colonial administration and the era of police state and its impact of imperialism imposed upon on us. The independence movement had united all the people across the provinces of princely states to fight for freedom and common ideas and thoughts of people have expressed in their acts. Even before the independence, our leaders had a futuristic vision about the India's freedom and administration of the independent India.

They thought that the pain and suffering which they had to undergone and the evil consequences of police state should be abolished and others should not face the same, so they decided that welfare state theory to be adopted. The incidents such as the conviction without trial, violation of free speech, acts done against doctrine of equality, privileges given to the British personals and discrimination on the Indians should not be in practice after the independence. Based on their learnings and experiences in the colonialism, they made various reforms in the Administration of Police, Prison, homes and correctional institution etc., that the people should not undergo the sufferings of them.

If anyone closely have a look at these fundamental rights each and every right had been constructed in such a manner that they are basic human rights for the dignity of an individual.⁸ The child is born it has to be provided with education, both for knowledge and employment purposes, so the makers thought of adding the free and compulsory education to the children.⁹ By ensuring this bonded labour and child labour is an offence and an unconstitutional act and

⁸ Dd Basus, Shorter Constitution of India, LexisNexis Publications, Vol-I, 15th Edition, 2017, P- 76.

⁹ Art. 21A of the Indian Constitution, 1950.

his prohibited under law which makes the children to pursue education which increase enrolment ratio in schools.¹⁰

If the person is a victim of caste discrimination it has to be abolished in the context of abolition of caste and untouchability.¹¹ Providing reservation for the unprivileged and weaker sections of the society and vulnerable classes for their upliftment as positive discrimination. The poor and marginalised are struggling to meet out their daily bread, so reservation in employment is provided.¹²

‘Work is Worship’ is a golden word of our ancestors, so work has been provided now worshipping God and right to enter the worship place has to be guaranteed to some extent by way of constitutional mandate. Liberty to practice and follow any religion of people’s choice is a secure nature of the country so the secularism has been a part of the constitution.¹³ In the event of health ill-ness providing with free and quality treatment and hospitalisation is guaranteed by way of right to survival and dignified life.¹⁴

Man is a social animal is a proven fact that he shares his feelings and communicate the views and ideas to others by expressing his thoughts. The draft’s man too enabled a provision on this regard and included speech, assembling by forming groups and association, reside anywhere and move freely and doing any work for occupation.¹⁵ Administration of order & regulation and establish peace in the society, maintenance of law and justice has to be made out, in that event several human rights violations may be happen either knowingly or unknowingly it has to be redressed.¹⁶

Our Indian judicial system is very clear, that no innocent should be punished or kept in peril. Keeping in mind the clause containing that, person should be punished only on the existing valid law of the land, and he/she should not be punished more than once for the same offence and particularly compelling or forcing a person to give evidence against him is also prohibited, on this context the confession given to a police officer is not valid in court to some extent.¹⁷

The 1st and foremost right of the human right is to live with dignity and freedom, this has been provided with the clause stating that, no one shall be put to curtailment of liberty only according to the procedure known to law. In the early days life and liberty both can be curtailed or

¹⁰ Art.24 of the Constitution of India, www.constitutionofindia.net.

¹¹ Art. 17 *ibid*.

¹² Art. 16 *ibid*.

¹³ Art. 25 *ibid*.

¹⁴ Art. 21 *ibid*.

¹⁵ Narender Kumar, *Constitutional Law of India*, Allahabad Law Agency, 9th Edition, 2022, P- 90.

¹⁶ V.K. Ahuja, *Human Rights: Contemporary Issues*, EBC Publications, 2019, P-77.

¹⁷ H.M. Seervai, *Constitutional Law of India*, Law and Justice Publishing Company, 4th Edition, 2018, P- 63.

deprived, but now the various judicial intervention and interpretation and the contribution of the judges, now it has been read as deprivation of liberty alone, because life is an integral part of human and if it has been curtailed then he will not exist.¹⁸ Justice V.R. Krishna Iyer, was a strong fighter of fundamental human right and liberty, he himself had created a doctrine called “Bail is a right and Jail is an exception”.¹⁹

The Hon’ble Indian Judiciary has time to time changed the context of right to life, is that, liberty of an individual can be curtailed during the time of arrest and detention, but at any point of time life should not be deprived. The encounter killings have been strongly opposed and condemned by the Judiciary and the National Human Rights Commission. Even the prisoners to have right to life, they cannot be subject to torture or cruelty by the prison personnel and to be treated with dignity.

The UN Convention on “Abolition of Death Sentences”, which is an optional protocol based on this and also upon the human rights’ centric judges of the judiciary, death sentences can be ordered only in the rarest of rare cases, which is very well known to law, even that too can be suspended or revoked by the pardoning power of the Hon’ble Rashtra Pati Ji, President of India.²⁰ Not only during the time of life, even after the death of an individual, has to be treated with dignity is the essence of our constitution. This is the basis of the principle of Gandhi Ji, “Punish the Sin, Not the Siner” accordingly the excising of mercy petition and curative plea jurisdiction for reducing the sentence or releasing from prison.

The lawful detention of a person has to followed based on the guidelines contemplated in the law and rules, his reason for arrest has to be mentioned and in the event ofailable offences has to be released on bail, if not as soon bring to the Magistrate for Judicial Custody, his right to consult a lawyer and has to be informed to his relatives.²¹ These above stated fundamental human rights has to be guaranteed to each and every individual without any discrimination and to be treated equally based on the doctrine of equality, if it has been violated, resorting a remedy by approaching the court is also a fundamental right.²² Each and every article of Constitution is designed, drafted and arranged in such a manner that right form birth to death the individual is provided and ensured with basic and fair human right.

¹⁸ D.R. Prem & R G Chaturvedi, *Law of Writs and other Constitutional Remedies*, Bharat Law Publications, Vol-I, 5th Edition, 2021, P- 40.

¹⁹ Sheetal Kanwal, *Indian Constitutional Law: The New Challenges*, Amar Law Publication, 1st Edition, 2016, P- 81.

²⁰ Surendra Malik & Sudeep Malik, *Supreme Court on Human Rights and Civil Rights and Political, Social, Individual and Economic Rights*, Vol-I & II, (1950 to 2018), EBC Publications, 2019 Edition, P- 994.

²¹ G.P. Tripathi, *Constitutional Law-New Challenges*, Central Law Publications, 2nd Edition, 2018, P- 30.

²² T.K. Tope’s, *Constitutional Law of India*, EBC Publications, 3rd Edition, 2010, P- 57.

V. INDIAN JUDICIARY AND HUMAN RIGHTS

The judiciary in India is always playing a proactive role in the dispensation of justice delivery system and maintaining the rule of law in the nation. The contribution of Hon'ble Supreme Court, High Court and its Hon'ble Judges, in an enormous way for the upliftment of the individual's Human Rights and particularly "Human Rights Commission" both the National and the State Commission while dealing with the human rights cases adjudicated well in the interest of the justice and the rights of the individual.

While deciding the case of "*Abdul Sathar V. The Principal Secretary to Government of Tamil Nadu*";²³ Hon'ble High Court of Madras was dealing the following substantial question of law pertaining to:

- whether the orders passed by State Human Rights Commission u/s.18 of the HR Act, is only a recommendatory or has immediate adjudication in nature.
- The State has any discretion to avoid in implementing such orders passes u/d. sec. 18 of the HR Act, by State HR Commission.
- Validity of order's passed by the Commission with regard to the recovery of compensation from the officer who involves in the human rights violation and to pay the victim who has been affected by such violation.
- Initiating the disciplinary proceedings against the officer is only the permissible way of recovery of compensation paid by the State after following the relevant service rules.
- Whether the officer can challenge the orders passed by the HR Commission by way of Art 226 of the Constitution and at which state.

All the above issues have been answered by the full bench of the Hon'ble Madras High Court consisting of 3 judges after analysing the various precedents and hearing the arguments of the learned counsels the bench come to a conclusion which are as follows:

With respect to the issue No. A) the recommendations of the HR Commission made U/S. 18, is binding nature on the State or its officers, and obligation to implement the recommendations as it is legally valid and enforceable immediately. In the event if the government fails to implement so, then the HR Commission may approach the Writ Courts U/s.18(b) of the Act to enforce the same. In such event the official respondents/ government shall not oppose the petition or challenge it unless the recommendations passed by the Commission are challenged by way of

²³ WP No. 41791 of 2006, order dated 05.02.2021 batch of writ petitions common order.

judicial review u/s. 18(e).

As the issue No. B) is about state's discretion in implementing the recommendations or can it avoid it. This has been answered favourably in accordance to issue No. A) as the recommendations are binding so no question arose in avoiding the recommendations.

The issue No. C) is connected with the deducting the damages from official's salary and paid to victim who suffered human rights infringement is also answered in favourable to the commission and the State has to implement without delay.

With regard to the issues D) and E) for recovery of compensation from the official to pay the victim by following the relevant service rules and only a notice to explain the reason, is enough to do so. In event of punishing the official by imposing penalty which can also be done after issuing a show cause notice. If the officer is aggrieved or suffered by the orders passed by the HR Commission, he can directly challenge the same by way of judicial review.

This judgment has been celebrated throughout the State of Tamil Nadu, as all the pending proceedings in the HR Commission and other appropriate forums including the High Court single judge and division bench matters may be decided accordingly. This issue has been answered with regard to the following batch of Writ Petition grouped together. Once again, the judiciary has stand with the litigant and the victim of human rights violations. (W.P. No. 41791 of 2006 High Court Madras) 05.02.2021.

In *Unni krishnan V. State of Andhra Pradesh*²⁴, a Writ Petition challenging various issues, was filed in Apex Court to declare, Right to Education as fundamental right and direct the State and Union to provide free education in medical and engineering courses and declare that charging of the capitation fees and other donation fees to the educational institution as unconstitutional. But the court had refused to allow the writ petition that educational right is a fundamental human right of citizen, but it has to be decided according to the financial situation of the State and the Nation. The court had formulated that educational right is part and parcel of life enshrined in Art. 21, of Indian Constitution and due to the judgment in later year the parliament amended the 86th amendment to constitution, 2002 was passed, and declared educational right as a fundamental human right by inserting an Art. 21A and fees less and mandatory education to children of the age 6-14 years.

As an impact of this judgment and the constitutional guarantee the Right to Education Act 2009 was enacted and guarantees 25% of allotments in the unaided schools to grant seats to

²⁴ 1993 AIR 2178.

economically weaker sections of the society. This cost has to borne by the respective state governments and the central will allot and sanction 50% of the total amount as aid for this scheme for the upliftment of the weaker section for their status in the society. The contribution of the Supreme Court towards education is remarkable, so that right to education has been guaranteed to each and every section of the people that the capitation fees and donation in the private educational institutions has been prohibited by the Union Governments notification and directions. It also made clear that all the private university and educational institution funded by the UGC has to be follow and adopt the relevant UGC guidelines and Governments Service Rules in education and employment.

In the case of *Bennet Coleman v. UOI*²⁵, the judiciary has once again upheld the Human Right. The contention of the petitioner is that, restriction was imposed upon the freedom of press and directly impacted on the Art. 19(1)(a) of the constitutional mandate of right to free speech and expressing the opinion. The petition was filed challenging the ultra vires the provisions of the News Print Control Order, 1962 and the News Print Policy 1972-1973.

In 1960 there was a short fall in news printing paper, to reduce the demand on news printing paper it was decided to import from the foreign countries. To reduce the excess import of the paper, government regulated it by way of a regulating order, 1962 that starting of new newspaper or edition is not allowed, and the papers should not cross the limit of 10 pages. The newsprint paper are not allowed to exchange between the other company or their own subsidy, in order to prevent the misuse of the law by the company having less page publication. This has been challenged by way of writ petition in the apex court by the leading newspaper companies. The Hon'ble Apex Court upheld the maintainability of the writ petition and allowed the writ by passing the following orders. The newsprint control policy was struck down as it violates Art. 14 and 19(1)(a).

In *Maneka Gandhi V. UOI*²⁶, the Hon'ble Supreme Court of India had contributed to a greater extent on account of human rights jurisprudence. The Constitutional Bench of 7 judge held unanimously in favour of the petitioner. The case of the petitioner is that she has received a showcase notice from the passport authority to give back the passport in 7 days from receipt of notice. Objecting the same and she had sent a reply stating the reason for the surrender. But the passport authority did not provide any explanation but stated that in the national interest, the passport has been withhold.

²⁵ 1973 AIR 106.

²⁶ 1978 AIR 597.

The main contention of the petitioner is that her fundamental rights such as Art. 14,19, and 21 and that had been violated by government. Substantial question of law involved in the case had been framed by the Court, that Art. 14,19 and 21 are interlinked with each other or to be read separately. The law framed by the parliament and the procedure contemplated under the law of the land has to pass the test of just, fair and reasonableness to establish the validity of it. Whether the law which takes away the freedom of movement and right to life is declared as reasonable. This issue has been settled by the Apex Court in a hallmark judgement which paved way for several other similar decision in making the interpretation of the constitution on par with the human rights perspective.

This decision had been more remarkable and the hallmark in the judicial history is that it consisted of 2 human rights centric judges, “*V.R. Krishna Iyer and P.N. Bhagwati*”. Not only in this particular case but their contribution towards law and particularly in the human rights matters are still occupied the field of judiciary. The contentions placed by the respondent government is that petitioner has to appear before a enquiry committee and interest of public policy the passport had been impounded. Further the law formulated by the supreme court in *AK Gopalan* will apply in the present case and procedure established by law does not require any validity test to pass and the makers of the constitution too does not mention any exception to the procedure establish by law. They clearly left the American system of “Due Process” and adopted the “Procedure Established” concept of British system and so their intention is unambiguous.

The Court held that, Art.21 is the very important and essential feature of the supreme law of the land and the word ‘Procedure Established’ should not be arbitrary or unreasonable in nature and should pass the triple test and Art. 14, 19 and 21 have a special relationship and coexistence in nature and it also over ruled the decade old decision of *AK Gopalan* practiced by the courts in deciding the fundamental right to movement and liberty. The Court formulated the interpretation of Art.21 and which leads to the new interpretation of life and in future many subjects had been added to right to life.

The judiciary once again proved that it is the saviour and protector of fundamental human rights in *Sunil Batra v Delhi Administration*²⁷. A letter was addressed by the prisoner to the Supreme Court judge stating that the prison authorities were harassing and torturing the inmate’s demanding money, from the persons who visit to see the prisoners. The very 1st time in the history of the judiciary the letter was treated as a Habeas Corpus Writ Petition by invoking an

²⁷ 1980 AIR 1579.

epistolary jurisdiction. In later days not only letters, news in the newspapers and television were also taken as a *Suo Motto* Public Interest Litigation. This case paved way for filing several writs in the court several associations and organisations were allowed to file PIL and Writs on behalf of the other victims, by giving away the age old 'Locus Standi' principle. Court appointed an advocate as *amicus curiae* and to file report regarding the prison torture and the report was also filed by the concerned advocate.

Very important and serious issues were discussed in the case relating to the rights and liberties of the prisoners.

- i) Prisoners & convicts are eligible for the rights and freedoms set out in the Constitution as other section of people.
- ii) Can the prisoner have the right to file a writ petition, and that too representing others.

The petitioner contended that human rights which are inalienable and applicable to every person across the state and there should not be any discrimination by excluding the prisoners in the ambit. The respondent contended that the detention and curtailment of liberty of a person are all made with regard to law and the sentence had been imposed by the judicial process and they are exempt from claiming the life and liberty.

The Court held that, the court can intervene by involving the provisions of the Art. 32 and 226 by doing justice to the prisoners and convicts who are subject to the torture and cruelty in the prison by the authorities. No one has the right to involve in the inhuman act against the prisoners and they too have right to liberty and dignity. It is their right to life had been suspended due to their act which is prohibited by law. Now in the later development of law and various international conventions and other organisations demand in the "*abolition of death sentences*" and which is a war against human right and no one has a right to kill human by justifying it as law and order.

Now our Indian judiciary too have abolished the death sentences too some extent by "*ordering of death sentences only in rarest of rare cases*". The court too mentioned that the prison laws and jail Manual had been enacted during the British era and it has to be immediately revisited or reformed to prevent the inhuman act and excessive abusive powers by the authorities concerned.

Once again, the Hon'ble Supreme Court of India in *Olga Tellis v. Bombay Municipal Corporation*²⁸ remarked the importance of human rights of the pavement dwellers and they are

²⁸ 1986 AIR 180.

entitled for the fundamental human right enshrined in the Constitution. A writ of mandamus was filed in the High Court of Bombay, challenging the illegal demolition of huts and constructions of the pavement dwellers without any prior information or notice by the said Bombay Municipal Corporation. The Sec. 314 of the “***Bombay Municipal Corporation Act, 1888***” authorises the officials to evacuate or clear the unauthorised constructions in the property belong to the corporation without issuing any notice or information.

The petitioner had also filed their affidavit in the Bombay High Court that after the notice period they will not prevent the demolition, for granting the order of Interim Stay. While filing the appeal in the Supreme Court the affidavit which they had filled acted as an estoppel in proceeding further with the removal of the encroachment. The findings of the court and its verdict were remarkable and a golden piece of judicial precedent were occupied the field for several decades and remembered as a good law and occupied the field.

The court said that Art. 14, 19 and 21 are integral part of human right and no law or the authorities can just away take back the Constitutional right provided by the nations statutory law. As in case of estoppel is concerned, court stated that, the individual himself is not having any right to relinquish or transfer the human right which he had been provided by the Constitution. The different treatment has to be given to the weaker sections and unprivileged class of people for their basic and survival in this world. They are to separated from the definition of the encroachers, the stand taken by the official respondents is concerned and the arguments kept by them in defining the pavement and slum dwellers as encroachers is unacceptable by this court.

Even the procedure established by law, cannot remove or take away the fundamental human rights guaranteed by the constitution to its citizens merely justifying the rules and regulations. The sudden removal of encroachment by the corporation acts amounts to arbitrary, unfair, unreasonable and unjust in nature and is highly unacceptable.

The court directed the state to provide alternate site to petitioners and this is in no way encouraging the person to involve in encroachment and the S. 314 of the BMC Act is unreasonable in nature and state must steps to provide rehabilitation facility to the people who are dwelling in the public place. This is a leading case and the humanitarian approach adopted by the judiciary is highly encourage able one.

VI. CONCLUSION

The Human Rights are essential for survival of the human and without these rights mere existing does not differentiate us from the animals. The principle of equality is that all should be treated

equally and provided with equal rights and dignity, but to implement the theory of social justice some positive discrimination is allowed in the Constitution. It is nothing but the positive equality, unequals and weaker sections are provided with preferential treatment and privileges when compared to the others, for their betterment and upliftment. Three kinds of justice such as the social, economic and political justice had been incorporated by the makers of the Constitution, to guarantee that no one can alter these rights, and in later stage they have become the “Doctrine of Basic Structure” and protected by the Apex Court and High Court.

The Preamble highlights the Sovereign, Social and Secular State, which defines the objectives and ideology of the state and its foreign policy. The Indian Policy is that treating the people all over world irrespective of citizen or non-citizen, a basic human right to be provided to all and particularly the foreigners, tourists and most importantly the refugees. The India’s stand during the Covid-19 pandemic, by providing vaccines to all over the people of world, when India is in more need of the same vaccines. Several other Nations had also provided oxygen concentrators and incubators to India, in an humanitarian approach by treating life is a life, and finding differences by pointing the nations and boundaries are irrelevant. Because every human being irrespective of gender, caste religion or nation has the mandatory recognition of life to live with peace and dignity.

Human right are not just single, it a combination of multiple rights which are very basic and essential for the survival such as life, liberty, dignity and equality. These human rights are straight away incorporated in the constitution as fundamental rights. The role played by UN in safe guarding and establishing human rights, has to remembered and noted by all of us in maintaining peace in the world. In order to save from the human rights violation and to promote human dignity, the UN has drafted an instrument called the UDHR to protect the International Human Rights and the members and non-members countries have signed the said declaration and ratified them into their countries law.

This human rights charter has been incorporated in the India both by way of the provisions of the Indian Constitution and by way of Protection of Human Rights Act, 1994. Each and every individual should be treated by others with the thought of brotherhood, providing the same rights and freedoms which we enjoy to our brothers including neighbours in other countries. There are four generation of human rights and the 4th one is of the recent origin. We all know that civil & political right are the 1st gen rights socio-economic and cultural right are 2nd gen rights, 3rd generation human right are collective right, and finally 4th gen rights are the digital and electronic rights means that protecting the internet and social media right of an individual in free speech and expression and connecting socially.

These rights have been backed by the international forums such as the UN in promoting the individual's right by enacting the UDHR and ICCPR & ICESCR. The human rights are called as fundamental rights because the constitution of India is the parent document and mother of all laws and supreme law of the state, when the human right are incorporated in the constitution they are also called as the fundamental rights and enforceable easily in the courts, this is also one of the greatest advantages of our constitution. During the time of drafting the Constitution, the makers think that, it should be easy to amend and changes should be made without any difficult. Because the law should be keeps on changing according to the needs of the national and international relationship and harmony.

The human rights which we enjoying today are the struggles of the past and the right which our future generations enjoy will be our struggle. To conclude with a remark, the clean environment is a human right, our forefathers left the environment clean and we having a social responsibility to give the same to our next generations. So not only clean environment there must be a social responsibility in human right issues among the present generation. Protecting water bodies, respecting others with dignity, and protecting the nature and raise voice against the inhuman and human rights violation.

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