



INDIAN APPROACH TOWARDS UNIVERSAL DECLARATION OF HUMAN RIGHTS: AN ANALYSIS

Manish Kumar Khunger

Assistant Professor Law, BabaFarid Law College, Faridkoti



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INTRODUCTION

The content of UDHR reflects sublime thoughts or philosophical foundations 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 fulfil the underlying purpose. The centrality of the factor of dignity to various rights brings respect to the human beings.

Article 1 of the UDHR states, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." According to Article 2, "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. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination (Article 7). Due process rights and remedial rights have also been guaranteed with due elaboration (Articles 5, 8, 9, 10 and 11).

A prominent feature of UDHR is a detailed treatment of welfare rights that could usher in the era of positive rights in domestic laws of the members of the United Nations. According to Article 25 (1), "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in the circumstances beyond his control." Right to work, equal pay for equal work, just and favourable remuneration (Article 23); social security (Article 22); right to rest and leisure (Article 24) and special care and assistance for motherhood and childhood [Article 25 (2)] have become major policies of socialist pattern of society/state. Use of resources of each state for upholding the economic, social and cultural rights indispensable for the dignity and development of his personality (Article 22) has hinted about the objective of these socio-economic rights. These rights are regarded in some circles as costly rights because of the financial burden upon the states as compared to the cheaper rights like expressional freedoms and other civil and political rights, which made the states to delay their enforcement until the attainment of adequate economic capacity on the part of the states to shoulder the responsibility.ⁱⁱ

By emphasizing that "Everyone has duties to the community in which alone the free and full development of his personality is possible" [Article 29 (1)], the UDHR has treated rights and duties as two different faces of the same coin. This comes closer to the ancient Indian concept that rights that we deserve and preserve come from duty properly performed. The social or communitarian dimension of human rights is also accentuated by contemplating reasonable limitations on rights. According to Article 29 (2), "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing the recognition and respect for the rights and freedoms of others and meeting the just requirements of morality, public order and the general welfare in a democratic society." The aspect of commensurability of restrictions with the evils to be dealt,

the concept of equal freedoms of all and promotion of public good have been contemplated as outcome of the working of human rights.ⁱⁱⁱ Thus as the pioneering attempt of listing human rights, UDHR has been comprehensive to include all the matrices of human freedoms coupled with responsibilities.

INDIAN APPROACH TO UDHR

India as original signatory to the UN Charter and active participator in the making of UDHR has explicit constitutional policy of fostering respect to international commitments. In the context of discussing about the Present Article 51 of the Constitution in the Constituent Assembly, Shri Biswanath Das observed, "...India even when she was in fetters and bondage, had her mighty contribution, not in the shape of influence of prowess or wealth, but by bringing her thought into the field of International concept, — the mighty intellectual and moral influence of a Tagore and a Gandhi who thought nothing short of international amity, honourable and open relations between nations and countries".^{iv} By the time UDHR had been launched, the discussion in the Indian Constituent Assembly on Fundamental Rights and Directive Principles had been completed. Hence there was no opportunity to profitably make use of the content of UDHR in framing the relevant constitutional provisions. But when we compare UDHR with Part III and IV of the Constitution of India, there is amazing similarity insofar as the core doctrines are concerned and the detailed exposition of the rights and policies in the Indian Constitution. B R Ambedkar observed, "The Declaration of the Rights of Man..., has become part and parcel of our mental makeup... these principles have become the silent immaculate premise of our outlook."^v Because of common wavelength and theme, permeability of UDHR into the interpretation of the constitution has been logical and in the fitness of things.

Regarding domestic internalization of human rights values under UDHR, the contribution of Parliament through its reformatory law is noteworthy. The legislation such as the Untouchability Offences (Prohibition) Act, 1955; the Protection of Civil Rights Act, 1955; the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989; the Immoral Traffic (Prevention) Act, 1956; the Bonded Labour (Prohibition) Act, 1986; the Child Labour (Prohibition and Regulation) Act, 1986; the Domestic Violence (Prohibition) Act, 2006; the Armed Forces (Special Powers) Act, 1958; the Contempt of Courts Act, 1971; the National Rural Employment Guarantee Act, 2006; the Sati (Abolition and Prevention of Glorification) Act, 1986; the Indecent Representation of Women (Prohibition) Act, 1986; the Environment (Protection) Act, 1986; the Protection of Human Rights Act, 1993 in addition to reforms in

familylaw, labour law and criminal law have tried to support the human right principles. The Centre-State relations have also facilitated better protection of human rights. The definition given in section 2 (d) of the Protection of Human Rights Act, 1993 for the word 'human right' does not explicitly include rights declared in the International Declarations; but confine its scope to right to life, liberty, equality and dignity guaranteed in the Constitution and International Conventions but enforceable in courts in India. However, because of inclusion of the rights enumerated by UDHR in the Constitution and major International Human Rights Conventions, the rights in UDHR are enforceable.

JUDICIAL APPROACH

In *Chameli Singh Vs. State of U.P.*^{vi} while holding that "Protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life" the apex Court gathered support from UDHR. Whether the newly derived unnamed right is inextricably connected with a named right is an appropriate line of enquiry, with the Court conducted in the decision with comfortable result.

In *Valsamma Paul Vs. Cochin University*^{vii} the Supreme Court observed, "Human rights are derived from the dignity and worth inherent in the human person. Human rights and fundamental freedoms have been reiterated in the Universal Declaration of Human Rights. Democracy, development and respect for human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human rights for women, including girl child are, therefore, inalienable, integral and an indivisible part of universal human rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are concomitants for national development, social and family stability and growth — cultural, social and economical. All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights." In this case it was held that since birth in particular caste or community is crucial for access to reservation under Articles 15 (4) and 16 (4), a person who had the advantage of better start by being born in a forward community is not eligible for the benefit of these provisions. The reasoning invokes the issue of necessity of special benefit, and objectively confines the benefit to most deserving candidate only. This avoids abuse of a right or of a social justice clause. Since the rights of other deserving candidates are also at stake, application of the rule of mutual balancing and control has moulded a just outcome in the case. The second facet of seedbed analogy of UDHR is put into service in this case.

A clearer pronouncement about respect to be given to UDHR in the course of constitutional and legal interpretation of basic rights is traceable in Vishaka^{viii} and Chandrima Das^{ix} cases. In the former, the Court observed:

“In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein. Any international convention not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee... Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right.”

The Court identified right against sexual harassment in workplace as an outcome of interaction amidst right to equality, freedom of business and right to dignified life. The direct and inevitable way in which this unnamed right is related to named rights is carefully considered by the Court.

ⁱ Author Can be Reached at manishkhunger23@gmail.com.

ⁱⁱ Michael Freeman, Human Rights (Cambridge: Polity Press, 2002) page 41.

ⁱⁱⁱ However, the major thrust for rights and superficial treatment of duties has given rise to a truthful criticism that UDHR neglects duties and encourages social conflicts and selfishness. See Michael Freeman, Human Rights (Cambridge: Polity Press. 2002) page 41.

^{iv} Constituent Assembly Debates, 25th November, 1948.

^v Cited in NaniPalkhiwala, We the People (1984) page 200. The reference was to the French Declaration, which had its own impact upon UDHR.

^{vi} AIR 1996 SC 1051; (1996) 2 SCC 549.

^{vii} (1996)3 SCC 545.

^{viii} Vishaka Vs. State of Rajasthan, AIR 1997 SC 3011; (1997) 6 SCC 241.

^{ix} Chairman, Railway Board vs. Chandrima Das, AIR 2000 SC 988; (2000) 2 SCC 465.