



Historical Perspective of Human Rights and A Special Reference with Pre-Indian Constitution - A Study

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Human Rights meaning:

Human beings are born equal and free in dignity and rights. These are moral claims which are inalienable and inherent in all human individual by virtue of their humanity alone. These claims are articulated and formulated in what we today call human rights, and have been translated into legal rights, established according to the law-creating processes of societies, both national and international. The basic of these legal rights is the consent of the governed, that is the consent of the subjects of the rights.

Introduction:

In earlier days of Europe, the Autocratic rulers, Priests, Landlords ruled the people mercilessly. They have the thought of invasions on the context of Imperialism. Their tyrannical rules made the people to revolt against them to get equality, liberty and freedom. They tried to get equal opportunities for all the people. The church played an important role and assists the kings to suppress the common people. In the context the people of Britain revolted peacefully against the king and change the rule of Britain from autocratic way to limited democracy. By the light of the above sequence, American war of independence, Martin Luther attempts, Waltair and Montesquieu inspired French people, Lenin in Russia, Gandhi in India, Nelson Mandela in South Africa, Dr. Sun-et-sen in China, Sheik Mujibur Rehman in Bengal fought for Human Rights, and the Human Rights importance is spread all over the world. With the above efforts, universal

human rights charter was declared, by the U.N.O which was organized on 24th of Oct 1945. The entire world now is celebrating 10th of Dec. every year.

Human Rights- Historical movements (Perspective)

To achieve the Human Rights different movements are took part in different countries. Among all the movements (Revolutions) some of them were greatly inspired the world are given below.

English Revolution – 1688:

As early as 1214 the English common people exacted an assurance from King John for respect of the ancient liberties. The “Magna Carta” is the evidence of their success which is written document. This is the first written document relating to the fundamental rights of citizens. Thereafter from time to time the king had to accede to many rights to his subjects.

The English Revolution is also called the Bloodless Revolution. The kings, the popes, and the Feudalists in Britain ruled and suppressed the people for a long period, the suppressed people suffered a lot during the above period. They have resolved to organized an organization which respect the public opinion by throwing the tyrannical government. They were waiting for an opportunity to dethrone. The Autocratic king James II people of Poritain invited the William of Orange the ruler of Holland who was the husband of Mary the daughter of James II. By hearing the decision of Britain people James II left the country to secure himself. Then the William of Orange was appointed the king of Britain by the Parliament. In 1701 the British Parliament made settlement Act, which give power the parliament to decide the future king after William of Orange without shedding a single drop of blood, the power in Britain changed from kingship the Democratic way. As a result the people of Britain got the right of expression, speech and liberty. By this above revolution the people of Britain step further to get equal opportunities.

This convention adopted by the Indian Constitution makers and incorporated in Indian Constitution under Article 54. Article 54 provides that the President shall be elected by an Electoral College consisting of (a) the elected members of both houses of Parliament; and (b) the elected members of the Legislative Assemblies of the States. The Indian Constitution makers adopted 1214 Magna Carta ancient liberties.

American war of Independance – 1777:

The people of Britain have a concept to get the American people under their control. The people of America wanted the Independency and were not accept the supremacy of Britain. The European people were suffered and downtrodden by the kings, Feudelists and popes. So they have decided to got out of Europe, and live peacefully. They have decided to go to the new continent America which was discovered by Amerigo

Vespuche. The people of Scotland, England, France, Germany and some of the other areas left their home countries and settled at America. They have colonized 13 colonies and establish a moderate government, giving liberty, religious freedom and expression of speech. The British parliament was not accepted all these developments of America. The parliament of British always tried to get America under their control. In America the people followed one culture, one script, one language, though they came from different countries, the Church authorities mainly the people. In Germany Martin Luther revolted against the church authorities and spread the proverbs of the Bible by calligraphy. The people followed him are called protestants. (They are Presbyterians in Scotland Huguenots in France, Puritans in Britain). However the British parliament tried several times to bring the Americans under their control. For that they imposed Boat tax, stamp act a boat with colours, Tea boxes and other articles to America. The raged American youth disguised as Red Indians and sunk the boat in Atlantic ocean. This act made the British Prime Minister Edmund Burk and William pit, the secretary angry. They sent an army to curb the American army under the leadership of Benjamin Franklin fought at Bunker Hills. This resulted victory to Britain over Americans which the British attitude is severe against Americans. Finally under the guidance and leadership of George Washington the armies again fought at Saretoga in 1777 and won over the British Army. The supremacy of Britain ended with the war and America became an independent country. With the war people of America got liberty and equality, a Government the respects the public opinion. The Americans were first to give Bill of Rights a Constitutional status.

American revolution concepts Liberties, Equalities and Fundamental Rights adopted by Indian Constitution makers and incorporated in the Part III of the Constitution. This chapter of the Constitution of India has very well been described as the Magma Carta of India.

French Revolution -1789:

France was under the tyrannical rule of Louis for many years. The kings were luxurious. During their regime the society is divided into two classes. The king, the Pope and the Feudalist are one class, the common people are second class. The First class people have all rights and facilities provided by the Government. But the second class common people have no any rights. Almost they lead life of slavery and labours. And also they should pay all taxes imposed by the Government. They do not have any Anvils to cook their food. They have no rights to question the upper class if their crops damaged by the animals of the upper class. Majority of the days in a year the commons should work for the constructions of the Government work.

Waltair, Montesque and other philosaphers inspired the commons and lit a light in their hearts towards revolution. The commons gathered together and decided to dethrone the Louis on the French thrown. At the time of Revolution Louis XVI was ruled France. He was an inefficient king luxurious and the

administration was in the hands of his wife Mary Antonette. She always follow the suggestions of Nector who was her close intimate. The suppressed people after bearing all the difficulties assembled near Tennis court on June 14, 1789 and resolved to dethrown the king and to freed the political prisoners at Bastile Jail on July 14, 1789 the outrageous public revolted against the king, demolished the Bastile. The king and the queen were captured and sent to jail. The people organized the Government which they like. That gives the public Liberty, Equality and Fraternity. These ideals of democracy gave value to Human rights throught out the world. In 1793, the king Louis XVI and his wife were hanged in public.

The Frenchy Revolution concepts Liberty, Equality and Fraternity are incorporated in Preamble of Indian Constitution.

Russain Revolution or Bolshivik Revolution 1917

In the earlier days the Czar kings of Russia established an elaborate country by annexations and invasions. The kings of Russia maintained secrecy, not outspoken their activities. Unlike other countries, here people have no any rights, freedom, not even to ask their minimum needs. The kinds led a luxurious life by spending public money which pooled from taxes. Many times the Government suppressed the secret societies organized by the public. The Government was not keeping any interest on the needs of the people. Because of the lack of the efforts of the govt. and its negligency people were suffered a lot, and not even to get daily amenities. By the experience of the difficulties, the people were waiting for an opportunity to revolt against the Government. At the same time Wladimir Ilich Leanov, generally known as Lenin started Bolshivik party. He organized the people to revolt against Czar Nikolas II.

In 1905 the common people of Russia were paraded to buy daily commodities and bread. They came out of the houses and were all on the roads. The army of the king fired cruelty. Many people died and several were injured. With this act the people enraged and dethrown the king Nikolas and established a public Government under the leadership of Kerenski. The properties of the king, the popes and Feudalists were confiscated by the new Government the loans and debts of other countries were evaded. The new Government the council of people's commissars' gave freedom. Liberty, Equality, Expression of ideas the people. It is also a trend to get Human Rights in Russia. This new Government banned the individual property all the property of individuals who got earlier is nationalized.

The first war of independence– 1857 (Indian Revolution)

(Cepoys mutiny)

The East Indian company rule was started in India after getting the Victory at Plassey 1757. The intention of the company rule was only extend the British Empire in India. To achieve the goal the company

introduced many acts which are benefited to their rule. First of all they abolished the traditional economic system. They abolished the small and cottage industries which give rural economy strength. Among the above policies, they imposed taxes; famines; draughts were occurred with this the life of the people was in danger. The people were angry against the Government. Abundant mineral wealth is available but the British Government was not establish an industry here. They plunder the wealth and minerals to develop their own country.

Some of the Governor Generals took drastic steps to curb Indian indigenous rulers. For example, Lord Dalhousie introduced the system of the 'Doctrine of Lapse' which resulted to confiscate the dominion of the indigenous ruler if he had no male child. By this law rulers of Jhansi, Avadh were lost their kingdoms.

The Britishers followed dual race system; which give priority to Britishers. So that the Indians, the Indian soldiers in the army lost their equal rights. This affects the dissatisfaction in the Indian soldiers inspite of the above reasons, the Government imposed some special restrictions against (the Hindu, Muslim) religious signs which resulted angry in among Indian soldiers. There was another rumor about using the weapons, the Bullets in the weapon were dumped in the fat of cow and pig ofcourse it reflect the religious tendency in the soldiers and they were not interested in using the weapons.

In a nutshell the administration of the British gave dissatisfaction anger and agony in the farmers, labours, soldiers and indegenious rulers. The soldiers at Meerut revolt against their higher authorities without following the army rules. This movement slowly started in the common people against. The Government Lakshmi Bai of Jhansi, Nana sahabm Tantia Tope were led the peoples movement. But unfortunately the movement could not get the support of the Land Lords, rich people and some of the indigenous rulers. So that the Govt. took an advantage in suppressing the revolution.

Though Indian first war of independence is totally a failure one. But it lit a light in the hearts of Indian to fight for equal rights, freedom and independency. It paved a way to future Indians to fight against Britishers. It was succeeded later and got Independence in 1947. Later in 1905-1911, the Vande Mataram Movement against the Division of Bengal, Home Rule League by Smt. Annebesant and Tilak in 1916-18, Non-Cooperation Movement 1920-22 by Gandhiji, Finally Quit India Movement in 1942 by Gandhiji raised to protect Indian Rights from British rule.

Chinese National Movement – 1918

China was not greatly damaged in I world war. But the consequences after the war made China the most turbulent. Internal crisis arose in the country and it results the great loss to the Chinese lives, property and humanity. In 1916 the leader of China, Yuvan-TSe-Kai was died. After his death the internal crisis continued upto 1918. In that period many internal wars, revolts were rose against the circumstances. The people of China protest the tyrannical rule and Imperialists concepts and made their country a Communist one.

The revolution from 1916 to 1918 put an end to the Marchus rule and its aim was to establish a Parliamentary Republic in the country. But unfortunately the Marshal Government came into force. Chinese people tried several times to protest against the Government. The Government from 1917-25 acted against the peoples opinion. It suppressed the Economic, Social and Cultural fields of the people. Finally Dr. Sun-et-Sen became the leader of Chinese and fought against the Marshal Government and succeeded to establish a Republic Government. He gave life to the individual liberty.

Bangladesh Freedom Movement – 1971

To get supremacy over West Pakistan, the rulers of East Pakistan invaded on West Pakistan and a military action was imposed. The West Pakistan people were experienced a cruel and atrocity methods by East Pak rulers. The military made ferocive atrocities, (not enough words to express) on West Pak people. The military killed babies before their parents, the ladies were raped before their husbands and many of them were shot dead. To face the atrocities of East Pak Commander Gen. Yahya Khan, Sheik Mujibur Rehman, a nationist lead the people to protest against the military rule. He struggled a lot to cope the people. Atlast the then Indian Prime Minister Mrs. Indira Gandhi helped the West Pak people to freed from East Pak. Finally 1972 Bangladesh and Independent country came to origin, Dhaka as its Capital. The Government of Bangladesh guaranteed the rights, equality and freedom to its nationals.

South Africa - National Movement

The Britishers occupied South Africa which was a remote one at that time. Mainly their intension was to plunders the Minerals and Forest wealth. They employed the local Africans as Labours. Generally, geographically South Africa is a Torrid Zone, as a reason the people in the region are black. They are also called Negros. The Britishers generally white in colour are developed the dual race theory and make the Negros as slaves. They have no rights, equal opportunities and etc. Some of the Indian groups are also there. They were also worked as labours in the Tea Estates, Mines and Forests. To preserve the rights of Indians Mahatma Gandhi went South Africa and fought for the rights of Indians. He organized the people and enlighten them to fight for their rights and liberty.

After a long struggle the African National Congress was established by the African Nationalists, to achieve their equal rights. Later on Nelson Mandela became the President of ANC. He struggled for the people for a long time and was imprisoned nearly 27 years. Finally with the efforts of the people South Africa freed from British.

The UNO and the different countries came to an understanding, that the people of world required Liberty, Equality, Fraternity and Law. We can prevent the revolution movements by providing the above ideals.

Even though, now itself some of the countries suppressing the humans Economic, Social, Cultural conditions, directly and indirectly. For example, American economic supremacy, racial wars in Sri Lanka, overlooking of human rights in Sri Lanka, Afghanistan and Pakistan.

These two revolutions emphasized the importance of Human Rights in modern world.

Human Rights in Ancient India:

The Ancient Indian Philosophers and thinkers expounded a theory of higher moral law over and above positive law embodying certain values of universal validity like Dharma (righteousness), Artha (wealth), Karma (desires) and Moksha (salvation), with a view to establish a harmonious social order by striking a balance between inner and outer, spiritual and material aspects of life. The Ancient Indian Legal Philosophers were universalists, humanists, rationalists and above all moralists who evolved a system of legal theory which was based on higher values and ideas i.e., on their conception of Dharma, which governed in an interrogative manner all civil, religious and other actions of men in society be at king or his subjects. Every aspect of life was regulated by Dharma the Supreme Law on Ancient India.

It is Dharma, which has impelled men since Vedic Ages to strive for 'righteousness'. The natural law so revealed in Vedas, Puranas, Mahabharata, Bhagvad Gita, etc. was extolled by the mystics, saints, poets and philosophers during the Vedic age. The philosophy expounded by the saints of Vedic time is nothing but a reinstatement of natural with religious fervor to enthuse people towards the path of Dharma, enlightenment and unity. It is the higher law of morality justice and righteousness which has been continuously guiding and directing Hindu thought, spirit and action from times immemorial and would continue to mould for the realization of Dharma in a timeless fashion. What is apparest is that the Ancient Indians were not indifferent or unaware of human rights jurisprudence. The basis of ancient human rights jurisprudence was Dharma – the ideal of ancient Indian legal theory was the establishment of socio-legal order free from traces of conflicts, exploitations and miseries. Indeed such a Law of Dharma was a model for the universal legal order. The Indian philosophers supported vehemently the view point that human rights and fundamental freedoms, allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. The Indian Philosophers considered human rights as based on

mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.

In 1367 B.C. Bahmani and Vijayanagara Kings are stated to have entered into an agreement for the human treatment of prisoners of war and the sparing of lives of the enemies unarmed subjects. It is also apparent that protection of the rights and the individual was the main purpose for which the state existed.

The concept of human rights in India may be seen to have existed in crystallization of values that the common heritage of mankind references occur as early as in the Rigveda to the three civil rights that of Tana (body), Shridhi (dwelling place) and Jibhari (life).

Koutilya's ArthaSastra asserts "in the happiness of the subjects lies the happiness of the king and what is beneficial to the subjects is his own benefit. The king's function was not conceived in terms of legislation, but of protection and this involved the protection not only of his subjects from invasion, but also of the order of society, the right way of life for all classes and ages (Varnasrama Dharma) as laid down in the sacred texts.

A close scrutiny of Buddhists period reveals that people were equal in all fields of their life. Life was more human and liberal and repudiated caste distinctions. After Budha, Ashoka protected and secured the most precious of human rights particularly right of equality, fraternity, liberty and happiness successfully established a welfare state and made provisions for securing freedom like freedom from hunger, health care, educational facilities and certain other social amenities in Ashoka's empire were perhaps initial efforts in the direction of the realization of social, economic and cultural rights. Ashoka was a champion of civil liberties. Torture and inhuman treatment of prisoners were prohibited under Ashoka's administration.

Human Rights in British India

The modern version of human rights jurisprudence may be said to have taken birth in India at the time of British Rule. The origin of this ideal in India lies in the history of India, especially in the struggle for freedom against the British rulers. When the British ruled India, resistance to foreign rule was manifested in the form of demand for fundamental freedoms and civil and political rights for the people. There was no fundamental law guaranteeing the subject's rights and liberties and they were humiliated and discriminated against in many ways, in their own country. British resorted to arbitrary acts such as brutal assaults on unarmed satyagraha, internments, deportations, etc. The freedom movement and the harsh repressive measures of the British rulers encouraged the fight for civil-liberties and the demand for constitutional guarantees of some fundamental rights. The avowed objective of several national organisations including that of the Indian National Congress in the beginning was only to secure some civil liberties and human rights of non-discrimination on grounds of race, colour, etc., in the matter of access to public places, offices and services. So National struggle for freedom, from its earliest stages, in its practical manifestation was largely

directed against racial discrimination and to securing basic human rights for all the people. Under the British rule, human rights and democracy were suspect, and socialism was anathema for the processes of administrative and judicial justice. So British period in India was rightly depicted as Kaliyuga or dark period in Indian history.

Lord Macaulay rejected the ancient Indian legal and political system as 'dotages of Brahmanical superstition' and condemned ancient Indian legal heritage and its inner core as 'an immense apparatus of cruel absurdities.

Gandhiji condemned British rule over India as 'Satanic', 'Adharmik' (unjust) and coercively violent (himnsa). Therefore, he expounded the theory of peaceful resistance (satyagraha) to fight British laws, for they deprived Indians a meaningful life, liberty and national independence. The right to life, liberty and pursuit of happiness as inalienable rights aroused the spirit of self-respect, nationalism and patriotism in the hearts of Indians. The people of India under the leadership of Mahatma Gandhi launched non-violent struggle to achieve self-government and fundamental rights for themselves. Though some militants took to violence also (Lokmanya Tilak advocated that freedom was the birth right of Indians for which they will have to fight. The avowed objective of several national movements and organisations was only to secure some civil liberties and human rights of non-discrimination on grounds of race, colour, etc., in the matter of access to public places, offices and services.

Commonwealth of India Bill' embodying a Declaration of Rights. Further, Madras Congress of the Indian National Congress in 1927 demanded incorporation of a Declaration of Fundamental Rights in any future constitutional framework. A Committee under Motilal Nehru was appointed. Reporting in 1928, this committee declared that the first concern of the people of India was to secure Fundamental Rights. It is interesting to note that the Constitution of the Republic of India enacted in 1950, incorporated ten of the nineteen Rights enumerated in the Moti Lal Nehru Committee Report, 1928. The Rights emphasised by the Motilal Nehru Committee Report were.

- 1) Personal liberty, Inviolability of dwelling place and property;
- 2) Freedom of conscience and of profession and practice of religion subject to public order and morality;
- 3) Right of free expression of opinion and to assemble peaceably and without arms and to form association and unions subject to Public order and morality;
- 4) Right to free elementary education... maintained and aided by the state without distinction of caste and creed;
- 5) Equality for all citizens before the law and in civil rights;
- 6) Right to every citizen to the writ of habeas corpus;

- 7) Protection of respect of punishment under ex-post facto law;
- 8) Non-discrimination against any person on grounds of religion, caste, or creed in the matter of public employment;
- 9) Equality of right to all citizens in the matter of access to, and use of public roads, wells and other places of public resort;
- 10) Freedom of combination and association for the maintenance and implementation of labour and economic conditions;
- 11) Right to keep and bear arms in accordance with Regulations; and
- 12) Equality of rights to men and women as citizens.

The Simon Commission, appointed by the British Government in 1927, however, totally rejected the demand voiced by the Nehru Committee Report. In 1930, Congress Working Committee gave a call for the attainment of 'Purana Swaraj'. The British Government adopted more repressive measures. Karachi session of Congress in 1931 adopted a detailed programme of 'Fundamental Rights' and Duties and Economic and social change. At the time, when Government of India Act, 1935, was on the anvil, it was proposed that Fundamental Rights were to be enumerated in the Constitution. But the Report of the Statutory Commission was not in favour of it, one of the reasons given being that the princely states in India were against the formulation of such rights. It is amply clear that more repressive measures were adopted to crush the liberties of the people during the Second World War. Thus, the Government of India Act, 1935 was passed without any bill of rights much to the disappointment of the Indian leaders. It was subsequently that Sapru Committee in 1945 stressed on the need for written code of Fundamental Rights and Constituent Assembly raised a forceful demand for the inclusion of human rights in the Constitution. With the commencement of the new Constitution on January 26th, 1950, the Natural law rights have been incorporated in the Preamble, in Chapters III and IV concerning.

Fundamental Rights and Directive Principles of State Policy. Under Part-III are included the Fundamental Rights.

- (i) Right to equality;
- (ii) Right to six freedoms:
 - (a) Freedom of speech and expression,
 - (b) Freedom to assemble peacefully without arms,
 - (c) Freedom to form associations or unions,

- (d) Freedom to move freely throughout the territory of India,
- (e) Freedom to reside and settle in any part of the territory of India, and
- (f) Freedom to practice any profession any occupation, trade business;
- (iii) Right to life and personal liberty,
- (iv) Right to freedom of religion,
- (v) Cultural and educational rights,
- (vi) Right to property,
- (vii) Right against exploitation, and
- (viii) Right to constitutional remedies.

Under Part IV are included the

- a) Right to adequate means of livelihood, right against exploitation, right to both sexes to equal pay for equal work,
- b) Right to work, to education and public assistance in cases of unemployment, old age, sickness,
- c) Right to equal justice and free legal aid,
- d) Right to living wage,
- e) Right to worker's participation in management of Industries, etc.

So the promulgation of the Constitution by the people of India in January 1950 is watershed in the history of India. The Preamble, Fundamental Rights and the Directive Principles of State Policy together provide the basic Human Rights for the people of India. Democratic socialism spelt out in the Preamble and the Directive Principles is meant to provide rich contents in which the fulfillment of Human Rights are hoped to be achieved.

Human Right Philosophy and the Constituent Assembly

The dream of the father of the Nation was for a total revolution, social, economic, political and spiritual. He wanted to "wipe every tear from every eye". And for Nehru, the service of India and her people meant, "the ending of poverty and ignorance and disease and inequality of opportunity." Therefore, when the Constituent Assembly of India set out on its work, history had already done much of the spadework for it. The history of this country, the composition of its population, India's social traditions, and the requirements

of true democracy were the determining factors with the members of the Constituent Assembly in their task of enunciating a set of justiciable rights for the newly independent people of India. To quote Guha: "The demand for a declaration of Fundamental Rights arose from four factors:

- 1) Lack of civil liberty in India during the British rule;
- 2) Deplorable social conditions particularly affecting the untouchable and women;
- 3) Existence of different religious, linguistic and ethnic groups encouraged and exploited by the foreign imperialist government, and
- 4) Exploitation of the tenants by the land lords.

The founding fathers of the Indian Constitution therefore had to assure the people in general and the different sections of the society in particular of a fair deal. They conceived the Constitution not only as a mechanism for governing the country but also as a potent instrument for social change and a code of human rights.

Further, on 10th December, 1948, when the Constitution of India was in the making, the General Assembly proclaimed and adopted the Universal Declaration of Human Rights, which surely influenced the framing of India's Constitution.

Conclusion

Throughout the world, different countries, different regions for years together for people fought for the freedom waging revolutions against atrocities of the Autocratic rulers. With the sacrifice the people, now the people enjoying the liberty, equality, rights in the society.

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