

# **Impact and Implementation of International Human Rights Norms in India**

## **Introduction**

Human rights are the rights a person has simply because he or she is a human being. Human rights are held by all persons equally, universally, and forever. 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. Kant said that human beings have an intrinsic value absent in inanimate objects. To violate a human right would therefore be a failure to recognize the worth of human life. Human right is a concept that has been constantly evolving throughout human history. They have been intricately tied to the laws, customs and religions throughout the ages. Most societies have had traditions similar to the “golden rule” of “Do unto others as you would have them do unto you.”

The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address questions of people’s duties, rights, and responsibilities. Human rights are fundamental to the stability and development of countries all around the world. Great emphasis has been placed on international conventions and their implementation in order to ensure adherence to a universal standard of acceptability. With the advent of globalization and the introduction of new technology, these principles gain importance not only in protecting human beings from the ill-effects of change but also in ensuring that all are allowed a share of the benefits. The impact of several changes in the world today on human rights has been both negative and positive. In particular, the risks posed by advancements in science and technology may severely hinder the implementation of human rights if not handled carefully.

In the field of biotechnology and medicine especially there is strong need for human rights to be absorbed into ethical codes and for all professionals to ensure that basic human dignity is protected under all circumstances. For instance, with the possibility of transplanting organs from both the living and dead, a number of issues arise such as consent to donation, the definition of death to prevent premature harvesting, an equal chance at transplantation etc. Genetic engineering also brings with it the dangers of gene mutation and all the problems associated with cloning.

In order to deal with these issues, the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application and Medicine puts the welfare of the human being above society or science. However, the efficacy of the mechanisms in place today has been questioned in the light of blatant human rights violations and disregard for basic human dignity in nearly all countries in one or more forms. In many cases, those who are to blame cannot be brought to book because of political considerations, power equations etc. When such violations are allowed to go unchecked, they often increase in frequency and intensity usually because perpetrators feel that they enjoy immunity from punishment.

### **What are Human Rights?**

Human Rights could be described as rights that are inherent to human beings, regardless of their race, sex, caste, nationality, religion, ethnicity, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these without any discrimination. The Fundamental rights guaranteed to every Indian citizen by the Indian Constitution also have the same aim as human rights.

Human Rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International covenants and enforceable by courts in India<sup>[1]</sup>.

No single phrase in recent human history has been more privileged to bear the mission and burden of human destiny than the phrase Human Rights. The reason behind it is that the millions of men, women, youth and children around the world will be born, live and die and never know they are owners of human rights says Ivanka Corti, former chairperson , CEDAW.

### **The International norms that influence our National Legal system**

The Universal Declaration of Human Rights (UDHR) was a noteworthy document in the history of human rights. This document was drafted by representatives from different countries with different legal backgrounds from all over the world. It is the first document that set out to make fundamental human rights universally protected. It was adopted in 1948, since then the UDHR has been translated to 500 languages, it is also the most translated document in the world.

A landmark case that shows the application of the UDHR in our national legal system is **Chairman, Railway Board v. Chandrima Das**, emphasizing upon the applicability of the Universal Declaration of Human Rights and principles thereof in the domestic jurisprudence, it was held by the Supreme Court that our Constitution guarantees all the basic and fundamental human rights set out in the UDHR, 1948, to its citizens and other persons. The chapter dealing with Fundamental Rights is contained in Part-III of the Constitution.

The purpose of this part is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties who, by virtue of their majority, may come to form the Government at the Centre or in the State. Further emphasizing the importance of the UDHR, the court has observed that the Human Rights Jurisprudence is based on the Universal Declaration of Human Rights, 1948, which has the international recognition as the 'Moral Code of Conduct' having been adopted by the General Assembly of the United Nations.

Another area that was included extremely late was that of child rights. The Convention on Rights of Child was signed only in 1989. It has been ratified by 192 countries except Somalia and the United States. The late action on child rights is a sad reflection of the uncaring attitude, lay almost total neglect, towards the rights of this weak segment of the society. Today, the child is a victim of sexual abuse, torture, war, violence, poverty, bonded labour, deprivation and denial. Health of the child and particularly malnutrition of children belonging to the disadvantaged segments of the society is an area of concern. Child labour in India is a historical fact and the exploitation of children for extracting labour is a grim reality. Almost 150 million children in this country continue to languish in slavery.

The weak and the poor of the world, often end up being mere footnotes of history. A child is perhaps the weakest element in the global community dominated by the adult. A comprehensive legislation to address the entire issue of child labour from the perspective of prevention, prohibition, regulation and rehabilitation to achieve the final objective of elimination of child labour is a pressing necessity and a challenge. Article 24 of the Constitution prohibits the employment of child below the age of 14 yrs in any factory or mine or any other hazardous employment. Art.39 clauses (e) (f), and Art.45 also make provisions for the protection of children against the exploitation and against the moral and material abandonment.

## **Implementation of Human Rights Laws in India**

The National Human Rights Commission (NHRC), which was established by the Protection of Human Rights Act, 1993 is the main body entrusted with promoting and protecting human rights. The Act also provides for the establishment of State Human Rights Commissions (“SHRC”) and Human Rights Courts (“HRC”) at the district level in each state. The Human Rights Act vests the NHRC with a broad mandate but it only has the power to issue recommendations and does not have any effective enforcement mechanism at its disposal. The scope of the NHRC’s work and the zeal of victims of human rights violations to seek the Commission’s attention is manifested by the fact that starting with 496 complaints in the first six months after it was established, the NHRC registered 50,634 complaints during 1999-2000.

Incorporation and Status of International Law in Domestic Law India has ratified the following relevant international human rights and humanitarian law treaties • Geneva Conventions (9 November 1950), Genocide Convention (27 August 1959), CERD (03 December 1968), ICCPR (10 April 1979), CEDAW, ICESCR etc.

There are no explicit provisions in the Indian Constitution regulating the incorporation and status of international law in the Indian legal system. However, Article 51 (c) stipulates, as one of the directive principles of state policy, that: The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with another.

International treaties do not automatically become part of national law. They have to be transformed into domestic law by a legislative act. The Union has the exclusive power to implement international treaties. The status of customary international law in domestic law follows the common law of England. Accordingly, a rule of customary international law is binding in India provided that it is not inconsistent with Indian law.

**Gramophone Co. of India Ltd v Birendra Bahadur Pandey** AIR 1984 SC 667, at 671: The comity of Nations require that Rules of International Law may be accommodated in the Municipal Law even without express legislative sanction provided they do not run into conflict with Acts of Parliament. But when they do run into such conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules except to the extent legitimately accepted by the constituted legislatures themselves. The doctrine of incorporation recognizes the position that

the rules of international law are incorporated into national law and considered to be part of the national law, unless they are in conflict with an Act of Parliament. Comity of nations or no, Municipal Law must prevail in case of conflict.

While national legislation has to be respected, even if it contravenes rules binding on India under international law, Indian Courts, in particular the Supreme Court, have consistently construed statutes so as to ensure their compatibility with international law.

The judicial opinion in India as expressed in numerous recent judgments of the Supreme Court of India demonstrates that the rules of international law and municipal law should be construed harmoniously, and only when there is an inevitable conflict between these two laws should municipal law prevail over international law.

The Supreme Court has even gone a step further by repeatedly holding, when interpreting the fundamental rights provisions of the Constitution, that those provisions of the International Covenant on Civil and Political Rights, which elucidate and effectuate the fundamental rights guaranteed by the Constitution can be relied upon by courts as facets of those fundamental rights and are, therefore, enforceable.

### **Conclusion**

As there were violations of Human Rights of men all over the world like domination and exploitation of Blacks by the Whites in U.S. (Black were treated as slaves and did not have the status of Human Being), discrimination of people of Schedule Caste and Schedule Tribe in India by the people of upper caste, exploitation of women, denial of freedom of speech and expression to women etc., so it was realized at the level of International Community that there should be rights of Universal character the outcome of which was Universal Declaration of Human Rights.

UDHR does not have any binding force behind it but it is accepted by all nations as a moral code of conduct. Bangalore Principles say that courts should adopt and implement the principles of International Human Rights Law in its decisions and specifically use those principles when there is gap in the domestic law. For example there is no specific legislation in India on Refugees so their rights can be protected by bringing them within the purview of Human Rights. But Bangalore Principles denies the use of such principles when they are inconsistent with the domestic law.

International legal norms has been accepted by Indian Legal system to provide people better laws on human rights. These norms are reflected in many decision of Indian Courts. There has been enactment of Human Rights Act,1993, Constitution of National /State Human Rights Commissions, Human Rights Courts etc. India has ratified several international treaties on Human Rights. All these development to Indian Legal system are the result of revolution at the international level to enforce these International Legal Norms on Human Rights.