

**HUMAN RIGHTS: AT THE THRESHOLD OF THE NEW MILLENIUM***A.S. Anand****I**

International Human Rights norms received an impetus 50 years ago following the harrowing experience of mankind of the two world wars and the holocaust. The world community was appalled by man's capacity to destroy himself. For the first time the concept of human rights asserted itself formally and prominently in an official international document, namely the United Nations Charter. The Universal Declaration of Human Rights which followed on the 10th December, 1948 was a standard setting declaration of value judgments; but had no legal sanction of its own. It was not a self-executing document. Thereafter, came the two covenants of 1966: one on civil and political rights and the other on economic, social and political rights.

At the threshold of the new millennium, no country can look back on its own record of human rights of this century with any sense of pride. Estimates say that in this century some 100 million persons have been killed in armed conflicts and 120 million more deaths have resulted from politically-related violence. The United Nations Human Development Report of 1998 has added that, civilian casualties in situations of armed conflict were some 5% at the beginning of the Century; they were over 90% in the 1990's with children being the main sufferers.

The United Nations Charter hoped to save succeeding generations from self-destruction by proclaiming and establishing equal and inalienable rights of all members of the human family – great or small, virtuous or vicious, rich or poor, wise or foolish and their inherent dignity, regardless of birth, status, race, colour, sex, language, religion or political or other opinion. Article 55 of the Charter of the United Nations requires the United Nations to promote: “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. Article 56 enjoins that: “all members pledge themselves to take joint and separate action in cooperation with the organisation for the achievement of the purposes set forth in Article 55”.

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II

In India, the Universal Declaration has greatly influenced constitution making particularly the concept of fundamental rights. The Indian Constitution was adopted shortly after the Universal Declaration. Article 51(c) of the Constitution enjoins the “state to endeavour to foster respect for international law and treaty obligation”. And Indian Courts have endeavoured to interpret the Indian Constitution and the laws in consonance with the international covenants ratified by India. Article 253 empowers the Union to legislate with respect to its treaty obligations without reference to or being bound by the scheme of distribution of legislative powers under the Constitution. This was to overcome the problems confronted by Canada in the case of *AG Canada v. AG Ontario*¹ while implementing the treaty obligations of the ILO.

In the common law tradition bipolar international treaties are not automatically part of the law of the land except to the extent legislatively reincarnated as part of the domestic law. But the fact that an international convention has not been incorporated in the domestic laws of India does not mean that its ratification holds no significance in Indian Law. Courts favour consideration of a domestic law which accords with India’s obligation under a treaty or an international convention to which it is a party, particularly in cases where the legislation is enacted after, or in contemplation of, entry into, or ratification of, the relevant international instrument. An international convention also plays part in the development of the common law by the courts.² And the decision in *Vishaka v. State of Rajasthan*³ has been referred to by some jurists as the ultimate in the endeavour of the Court at a virtual judicial incorporation of the treaty law into the corpus juris.

1 (1937) A C 326

2 See *Vaghese v Bank of Cochin* AIR 1980 SC 470, where the Supreme Court in holding civil imprisonment unconstitutional referred to the International Covenant on Civil and Political Rights which bans imprisonment for not discharging a decree debt unless there be some other vice or mens rea apart from failure to foot the decree. international law frowns on holding the debtor’s person in civil prison as hostage by court. *Harbhajan Singh v Union of India* 1986 (4) SCC 678 expatiated on immunity to foreign embassies and the principles behind the doctrine of immunity. in *Minerva Mills v Union of India* AIR 1980 SC 178. the court noted the various dimensions of the Universal Declaration of Human Rights. *Maneka Gandhi v Union of India* AIR 1978 SC 597 the court relied on art 13 of the Universal Declaration of Human Rights which speaks of a right to freedom of opinion and expression through any media and regardless of frontiers to hold that freedom of speech and expression guaranteed by article 19(1)(a) is exercisable not only in India but also outside. a reference to the Universal Declaration of Human Rights and the International Covenant on Economic Social and Cultural Rights was also made in *Keshavananda Bharati v State of Kerala* AIR 1973 SC 1961. In *Nilabati Behara v State of Orissa* AIR 1993 SC 1960 and *People’s Union for Civil Liberties v Union of India* JT 1997 (2) SC 311 reliance is placed on art 9 (5) of the International Covenant on Civil and Political Rights to hold that an enforceable right to compensation is not alien to the concept of enforcement of guaranteed rights and in *Vishaka v State of Rajasthan* 1997 (5) Scale 453 the Supreme Court ruled that in the absence of domestic law occupying the field to formulate measures to check the evil of sexual harassment of working women at all work places, the contents of international conventions and norms are significant for the purpose of interpreting the guarantee of gender equality right to work with human dignity in arts 14 15 19 (1) (g) and 21 of the Constitution

3 *Supra* note 2



III

The Human Rights and humanitarian norms have progressively emerged as the new rules of customary international law. It is now recognised that relatively extensive participation in a treaty, coupled with a subject matter of general significance and stipulations which accord with the general sense of the international community, do establish for some treaties an influence far beyond the limits of formal participation in them. These factors give such a treaty something of the complexion of a legislative instrument, which assists in the acceptance of the treaty's provisions as customary international law in addition to their contractual values for the parties. The process by which the provisions of a treaty may come also to be rules of customary law is of considerable significance for the role of treaties in international law.

Implicit in the discourse of 'common standards of achievement' for all people and all nations is a whole range of challenges to universality of the rights from the proponents of cultural relativism, domestic sovereignty and gender justice. The inequalities of the international economic order also detracts from the concept of universality and the individuality of Human Rights.

IV

There is, perhaps, no need to recount the details of human deprivation in the developing world. According to World Development Report, 1998

Just 225 Billionaires have a combined wealth of 47% (i.e. 2.5 billion of the world's population),

The 3 richest persons have assets that exceed the combined GDP of 48 least developed countries,

The 15 richest persons have assets that exceed the total GDP of sub-Saharan Africa

The wealth of 32 richest persons exceeds the total GDP of South-Asia,

The assets of 84 richest persons exceeds the GDP of China with 1.2 Billion population

The additional cost of achieving and maintaining universal access to basic education for all, basic health care for all, reproductive health care for all women, adequate food for all and safe water and sanitation for all is roughly \$ 40 billion a year. This is less than 4% of the combined wealth of 225 richest people in the world.

When domestic violations of human rights become the subject of international jurisdiction and scrutiny, questions inevitably arise as to the assurance of fairness of such international jurisdiction and non-selective nature of the sanctions. This is an increasingly sensitive and important area of international law.

4 *World Development Report* 30 (1998)



In 1993, as the World Conference on Human Rights approached, Asian leaders adopted the Bangkok Declaration which claimed that “while human rights are universal in nature they must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particulars and various historical, cultural and religious background”. It was also in a sense a reaction against the foreign policy of some of the western countries, which use human rights as a political tool. The resistance is against the perceived attempts made by western countries to use human rights as a disguise to interfere in the third world countries’ internal affairs.

Some of the Asian countries seek to maintain that the right to development is all that matters and that political liberties will just have to wait in the queue. A number of them hold freedom to be a luxury for the starving masses which can be bestowed upon them only after the primary needs of food and health have been fulfilled. Proponents of the ‘full belly thesis’ point to the history of the industrial revolution in Europe and to the need to focus the vigour of the people towards meeting essential needs.

But then the cultural relativists, tend to perceive cultures from a static, romanticised perspective in which traditional societies are defined as holistic entities, not affected by human history and the dynamics of cultural changes. This static view of culture fails to recognise the inherent strength of cultures to nurture developmental options and to accommodate individual responses, while preserving the continuity of authentic tradition. Dynamics of change have also been accelerated by the technological and communicative age leaving no society a closed one. Individualist values have a great appeal of culture. The most significant developments are in international law. Fundamental human rights principles have become universal by virtue of their entry into international law as *Jus cogens*, customary law, or by convention. In other words, the relativist argument has been overtaken by the fact that human rights have become hegemonic and therefore universal by fiat.

V

International human rights norms have brought about great changes in the international institutions and structures. International law still protects sovereignty, but – not surprisingly – it is the sovereignty of the people rather than of the sovereign. Even as sovereign states have remained the true holders of power; authority continues to be distributed among various power. Into this framework, the two doctrines of human rights and self-determination of peoples have introduced seeds of subversion which are destined sooner or later to undermine and erode traditional structures and institutions. And gradually to revolutionalise those structures and institutions. With the emerging trends in international Human Rights regime and waning of domestic sovereignty, the efficacy of enforcement of fundamental rights nationally will soon be interwoven with international institutional mechanisms.



VI

In India the greatest and the most urgent challenges of human rights are in the areas of maternal and child care, child education, child labour, child abuse, and the protection of minorities and the weaker sections of society. These great societal issues are not issues of excellence but of survival. There is again the great task of streamlining the criminal justice system and protection of citizenry from custodial violence or investigative abuses. Unless human rights are made the focal point in good governance, no progress is either possible or sustainable as no amount of economic development can be sustained without a baseline of respect for human rights. The Human Rights Commissions of a country have a great and noble task to perform and to make their contribution to the efforts of society to usher in a just and caring society and an egalitarian social order. The National Human Rights Commission in India under the dynamic leadership of Mr. Justice Venkatachaliah, is doing a great job in not only protecting the basic human rights of those who are in the need of such protection but also to educate the citizenry of this great democracy about their fundamental rights. The efforts of the Commission are aimed at assuring the citizens of this country that they live in a country which is governed by the rule of law. The final hour of glory for law and justice, the courts and the judges is when they protect human rights of the citizens against every onslaught. The efforts of the Commission to protect human rights are based on its belief that for building a sound foundation for the new millenium the preservation and protection of human rights is inevitable and essential.

And to those in authority who yet contrive doubts as to the inevitability of the human rights regime as the foundation of every good value in society, one can only answer with the powerful words of *Belloc*, "*My friend you are asking me the hour of the night. It is already morning*".