

Key Note Address
By
Justice Narendra Kumar Jain
Chairperson, Sikkim Human Rights Commission
On 10th April, 2015
in
“Awareness Programme on Human Rights”
at Namchi (South)

- The dignitaries sitting on and off the dias
- Electronic and Media persons
- Ladies and Gentlemen

Good afternoon to all of you

This is our first “Awareness programme on “Human Rights” in the State of Sikkim at Namchi, South, and because of this, Namchi has been included in the history of Sikkim Human Rights Commission.

The Human Rights Commission, in the State, was established in the year 2008. I took over the charge in October 2014. At that time, not a single complaint was pending in the Commission. I know that people of Sikkim are peaceful. Sikkim is also known as peaceful State. But, I also know that most of the people of the State do not know about “Human Rights” and “Human Rights Commission”. Therefore since the date of my joining, it was going on in my mind that the Sikkim Human

Rights Commission should organise “Awareness programmes” to make the public of Sikkim, aware, about their Rights and violation of Human Rights. Even otherwise, as per provisions of section 12 (h) read with section 29 of the Protection of Human Rights Act, 1993, it is a duty of Commission, to make the public aware about violation of Human Rights or abatement thereof or negligence in the prevention of such violation, by public servant.

WHAT ARE HUMAN RIGHTS?

Human Rights are commonly understood as inalienable fundamental rights, to which a person is inherently entitled simply because she or he is a human being. Human rights are rights inherent to all human being, whatever our nationality, place or residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.

A very comprehensive definition of “human rights” is given in the Protection of Human Rights Act, 1993 enacted by our Parliament. Under Section 2(1)(d), 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.

Human rights, as such, are those rights which an individual being an individual is entitled to and which in a civilized society are recognised and enforced. The core element of such rights is universal and consists of freedom, equality and liberty.

Universal human rights are often expressed and guaranteed by law, in the forms of Treaties, Customary International Law, General Principles and other sources of International Law. International Human Rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. The principle of universality of human rights is the cornerstone of international human rights law. This principle, as first emphasized in the Universal Declaration on Human Rights in 1948, has been reiterated in numerous international human rights convention, declarations, and resolutions. The 1993 Vienna World Conference on Human Rights, for example, noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems.

THE ORIGIN:

The concept of human rights is as old as ancient concept of “Natural Rights” based on natural law. Various theories

have been advanced by jurists with regard to origin and nature of human rights and fundamental freedoms. The earliest of these can be regarded as the Roman doctrine of 'Jus Naturale'.

'Jus Naturale' has been defined as "the law imposed on mankind by common human nature, that is by reason in response to human need and instinct." It is also said to be the law which nature herself established. God is the source of this law. The doctrine implies that every human right is inherent in the man. In fact, it existed even prior to the existence of the State and the State is not competent to violate it, rather the State should recognize and protect it.

Although the concept of human rights developed mainly because of the doctrine of natural rights under natural law, but it has originally evolved in the field of domestic legislation as in **Magna Carta (1215)**, **Petition of Rights (1628)**, the **Habeas Corpus Act (1679)**, **Bill of Rights (1689)** and the **Act of Settlement in England (1701)** which may be regarded as landmarks in the path of liberty. The notion of the natural rights continued to attract men's minds, and constitutions of practically all the countries today include or at least give a formal recognition to the rights of man and the citizens".

The expression "Human rights" is of recent origin emerging from International Conventions and Charters. The

expression “Human Rights” is to be found in the Charters of United Nations adopted at San Francisco on 25 June, 1945. The preamble of this charter declared that United Nations shall have for its object, inter alia, “to reaffirm faith in fundamental human rights.” Article 1 states that the purpose of United Nations shall be, among others, “to achieve international cooperation.....in promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or religion.....”

CLASSIFICATION OF HUMAN RIGHTS:

Human rights can be classified and organized in a number of different ways, at an international level the most common categorization of human rights has been to split them into civil and political rights, and economic, social and cultural rights.

Article 2 to 21 of the Universal Declaration of Human Rights (1948) relate to civil and political rights which includes freedom from slavery, freedom from torture and cruel, inhuman or degrading treatment or punishment, freedom from arbitrary arrest, detention, the rights to a fair and public trial, freedom of opinion and expression, rights to own property, freedom of thought, freedom of movement and residence.

Throwing light on the importance of the fundamental rights enshrined in Part III of the Constitution of India, Justice P.N. Bhagwati, in ***Meneka Gandhi v. Union of India***,(reported in AIR 1978 SC 597 (620) observed that:

I quote

“The fundamental rights represent the basic values cherished by the people of this country since Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantees on the basic structure of human rights and impose negative obligations on the State not to encroach on individual liberty in the various dimensions.”

I unquote

The Hon’ble Supreme Court, recently, in the case of **Suresh Kumar Kaushal v/s Naz Foundation, reported in 2014 (1) SCC 1** observed that “Right to life means Right to live with dignity”.

I quote para 75 of the Judgment of Hon’ble Supreme Court

“Para 75- The right to live with dignity has been recognized as a part of Article 21 and matter has been dealt with in Francis Coralin Mullin V/s UT of Delhi (reported in

1981(1) SCC 608), wherein the court observed (SCC P.618 para 8)

8- But the question which arises is whether the right to life is limited only to protection of limb or faculty or does it go further and embrace something more. We think that the right to life includes the right to live with dignity and all that goes alongwith it, namely, the bare necessities of life such as nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely, moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the Country, but it must, in any view of the matter, includes the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self. Every act, which offends against or impairs human dignity would constitute deprivation pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights, Now obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this rights to

live and it would, on this view be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorizes and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness. It would plainly be unconstitutional and void as being violative of article 14 and 21”.

I unquote

The Hon’ble Supreme Court in **“Deaf employees Welfare Association v/s Union of India, reported in 2014 (3) SCC 173** considered the Cases of “Deaf and Dumb persons” and in para 28, held as under:

I quote para 28

Para 28- “Deaf and dumb persons have an inherent dignity and the right to have their dignity respected and protected is the obligation on the State. Human dignity of a deaf and dumb person is harmed when he is being marginalised, ignored or devalued on the ground that the disability that he suffers is less than a visually impaired persons, which, in our view, clearly violates Article 21 of the Constitution. Comparison of disabilities among “persons of disabilities”, without any rational basis, is clearly violative of Art. 14 of

the Constitution of India. In our view, the recommendation made by the Ministry of Health and Family Welfare for extending the benefit of transport allowances to the Govt. employees suffering from hearing impairment in equal with blind and orthopedically handicapped Govt. employees is perfectly legal and is in consonance with Art. 14 and 21 of the Constitution”.

I unquote

All constitutions are said to be the heir to the past as well as testament of the future, equally applies to India’s Constitution.

Indian Constitution (in Part III) provided not only for fundamental rights but also makes provision for its enforcement. Thus, India’s Constitution not only recognizes human rights (civil and political rights) in principle but also ensures remedy in case of their violation translating into reality the maxim: *ubi jus ibi remedium*, that is, where there is a right, there is remedy.

Articles 22 to 27 of the Universal Declaration of Human Rights relate to economic, social and cultural rights such as Right to Social Security, Right to work and Protection against Unemployment, Right to Rest and Leisure, Right to a standard of Living adequate for Health and Well being of the self and

family, Right to Education belong to the second period in point of time.

Articles 28-30 are of general application and form the third generation of rights-i.e. Right to Peace, Right to a Healthy and Balance Environment, Right to Humanitarian Disaster Relief, Right to participate in and benefit from the common heritage of mankind, Right to Political, Economic, Social and Cultural self determination, and then Right to Economic, and Social Development-all these rights commonly called collective rights or social solidarity rights came to be recognized in the later half of 20th Century.

THE DEVELOPMENT:

The effect of Second World War compelled the international community to codify rules to protect human rights and the Charter of United Nations, which came into force on 24 October, 1945, recognised that human rights have an international dimension and they are no longer solely a matter falling within the exclusive jurisdiction of a State. This charter gave legal authority to United Nations to embark upon codification of human rights and the world's first International Human Rights documents viz., Universal Declaration of Human Rights, 1948 came to be adopted on 10 December, 1948 in the

form of a resolution passed by the United Nations General Assembly. Besides the preamble, it consists of 30 Articles.

In United Kingdom there is no written constitution and consequently, there is no constitutional guarantee for human rights, but they are protected there by a representative parliament and by judges having profound regard for principles of liberty.

We, in India, are fortunate to have a written constitution, and fundamental rights that are guaranteed to every citizens of India are nothing but evolution of human rights in course of time into fundamental rights. Therefore, in our country, Courts have always safeguarded fundamental rights of the citizen and as the watchdog of the Constitution, the courts ensure that any State action including legislation, which violates or is inconsistent with a fundamental right is struck down because the Constitution is the fundamental law of the land.

The Supreme Court in the famous case of ***Golaknath vs. State of Punjab*** said that fundamental rights are the modern name for what have been traditionally known as “natural rights” Since natural rights are the offshoot or natural law and since the rules of natural law are of universal application,

natural rights are inherent in every human being in all ages and in all times

Relation of Human Rights with Environment:-

All human beings depend on the environment in which we live. A safe, clean, healthy and sustainable environment is integral to the full enjoyment of a wide range of human rights, including the rights to life, health, food, water and sanitation. Without a healthy environment, we are unable to fulfil our aspiration or even live at a level commensurate with minimum standards of human dignity. At the same time, protecting human rights helps to protect the environment. When people are able to learn about, and participate in, the decisions that affect them, they can help to ensure that those decisions respect their need for a sustainable environment.

In recent years, the recognition of the links between human rights and the environment has greatly increased. The number and scope of international and domestic laws, judicial decisions, and academic studies on the relationship between human rights and the environment have grown rapidly.

A close look at the history of origin and development of human rights will reveal in un-mistakable terms that

Environmental Law in its present condition is an attempt to bring into play the human rights concept. Therefore, human rights have played a fundamental role in protecting the Environment.

True source of Environmental Protection:

The judicial trends during last two decades has shown that Articles 21, 47 and 48-A of the Constitution have received multi dimensional interpretation in as much as the whole body of case law on Environmental Protection can be traced to these important articles. Human Rights having found its place in the chapter on Fundamental Rights and in the chapter on Directive Principles of State Policy of our Constitution, has ultimately led to protection of environment to a great extent and our Hon'ble Supreme Court has played a pivotal role in ensuring that Environmental Rights flow from the human rights. Now we have a body of Environmental Rights covering various spheres of human activity. Most important among them are Freedom from Pollution, Protection and Preservation of Air, Soil, Water, Sea, Flora and Fauna, Highest attainable standard of Health, Safe and Healthy Food and working Environment, Adequate Housing and Living conditions.

The Indian Penal Code, 1860 contains a detailed catalogue of public nuisance offences in relation to air and water pollution.

Sec. 133 of the Code of Criminal Procedure, 1973 permits an individual or a group to seek conditional order for removal of public nuisance.

Under Sec. 91 of Civil Procedure Code. 1908 two or more persons, with the leave of the Court, may seek similar relief in case of public nuisance.

Order I Rule 8 of Civil Procedure Code permits class action suits where numerous members of a class have the same interest in the suit.

Article 226 of the Constitution gives power to the High Court to review administration action-Essentially with regard to implementing Environmental standards. Several labour legislations like Factories Act ensure environmental protection.

The Nation Human Rights Commission has issued Instructions/Guidelines from time to time in respect of Human Rights, like, Medical Examination of prisoners on Admission to Jail, Death During the course of Police Action, Custodial Deaths/Rapes, Cases of Encounter Deaths, Visits to Police Lock-ups/Guidelines on Polygraph Tests and Arrests, Measures

to Improve Police-Public Relationships, Human Rights in Prisons, Procedure/Guidelines on premature release of Prisoners, Instructions regarding videography of post-mortem examinations in respect of deaths in jail, Guidelines for video-filming and photography of post-mortem examination in case of death in police action, Format of Post-Mortem examination in case of death in police custody, Women's Rights, Rights of Children's, Ending Manual Scavenging, Illegal Trade in Human Organs, Guidelines for the Media in addressing the issue of child sexual abuse, Guidelines regarding conducting of Magisterial Enquiry in case of Death in Custody or in the course of police action. All these guidelines/instructions are available at the website of National Human Rights Commission.

So far as, Sikkim State Human Rights Commission is concerned, it was established in October, 2008. The Human Rights Commission is supposed to be an institution with the responsibility of promoting and protecting the human rights of the people of the State, thereby fostering an administration for good governance.

The Human Rights Commission is neither a parallel body nor established to dominate any institution or Government body or agency. It is an autonomous and independent body

working for betterment of human rights and is concerned about violation of such rights. Human Rights are equally available to every individual and needs to be safeguarded as per the charter of U.N. and as per our constitution and the Act. The Government is duty-bound to see the welfare of the public at large. The State Human Rights Commission is only to facilitate and help the Government to discharge its duty of good governance and to promote the maintenance of the dignity and worth of human being. In order to avoid the violation of human rights it is imperative to provide quality service to the people of the State which is the ultimate object of a Welfare State as enshrined in the Directive Principles of the Constitution. It is not only the Government which has to discharge its responsibility. Individuals, intellectuals, human rights activists and NGOs working in the field of human rights have to work towards arresting the graph of human rights violations. Only the paradigm shift in thinking will help counter such human rights violation.

The functions of a State Commission are similar to those of the National Human Rights Commission. A State Commission, however, cannot take up the study of treaties and other international instrument on human rights and make recommendations for their implementation [Section 29(c)].

This is so because a state has no power to make treaty or enter into foreign relations.

Like the NHRC, a State Commission is also required to submit annual report and, if necessary special report to the State Government. The State Government is required to place such reports with memorandum of action taken or proposed to be taken on the recommendations of the Commission. Where the Government does not accept the recommendations, it should give reasons for non-acceptance.

Thanking you.