

**NATIONAL HUMAN RIGHTS COMMISSION**

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**ADDRESS**  
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**HON'BLE MR. JUSTICE DIPAK MISRA**

**CHIEF JUSTICE OF INDIA**

**12<sup>TH</sup> OCTOBER, 2017.**

**FOUNDATION DAY FUNCTION AT  
NATIONAL HUMAN RIGHT COMMISSION (NHRC)**

**12<sup>TH</sup> OCTOBER, 2017**

I am extremely delighted to participate in the foundation day function being organized by the National Human Rights Commission of India today. The celebration of the foundation day is an occasion of national importance because this day marks an important milestone in the quest of realization of human rights for all citizens of India by establishment of "the Commission".

Sixty-nine years back the General assembly of United Nations adopted the Universal Declaration of Human Rights, 1948 which proclaims that "*All human beings are born free and equal in dignity and rights*". The declaration has provided guidance to many nations in ensuring that their laws are in accord with the fundamental principles of human rights. The declaration serves as a laser beam for protection and promotion of human rights.

In keeping with the spirit of the Universal Declaration of Human Rights (UDHR), 1948 and the Paris Principles, adopted at the first 'International Workshop on National Institutions for the Promotion and Protection of Human Rights' held in Paris in October 1991, the National Human Rights Commission of India has worked unceasingly for the realization of a range of civil, political, social, cultural and economic rights for the citizens of this country. It has been the consistent endeavour of the Commission to safeguard human rights of individuals and communities across the country in consonance with the spirit of the Indian Constitution.

The Commission has over the years made significant contribution to the protection and advancement of the right to life, liberty and dignity of the individual. It has also contributed to the growth of a human rights movement in the country. It is heartening to note that there is growing human rights awareness within the country and the people of the country have placed their faith in the Commission for the protection of their rights as is evident from the substantial

increase in number of complaints received by the Commission over the last 20 years.

Having stated this, let me reflect on human rights in the cultural history of India. Indian culture has been product of synthesis of diverse cultures and religion that came into contact with the enormous Indian sub-continent over a very long stretch of time. The philosophy of human rights is echoed in various forms such as "Loka Samastha Sukhino, Bhawanthu" which means that entire humanity be happy. Rig veda talks about three rights which are civil in nature that is Tan (body), skriethi (dwelling place) and jibhasi (life), thereby relating to the right to physical liberty, right to shelter and right to life as we know them today.

In Rajadharma principle king was given power only to enforce the law. Dharmashastras did not confer on or recognise any legislative power in the king. This is the most important distinction between Kinship in India and the concept of kingship in the west. But under the kingship as recognised and established under the Dharmashastras, the

laws were those lay down by the Dharmashastras themselves. They did not authorise the king to laid down new laws or amend provisions of the Dharmashastra. On the other hand, Dharmashastra also laid down the laws governing the conduct of the king himself (Raja Dharma).

Kautaliya, the author of the eminent political treatise Arthasastra categorically ordained that the king should also provide the orphan, the aged, the infirm, the afflicted and the helpless with maintenance. Kautalliya emphasised on right to happiness:

Prajasukhe Sukham Rajnah

Prajanam cha Hite Hitam

Naatmapriyam Hitam Rajnah

Prajanaam tu Priyam Hitam

(‘In the happiness of the subjects lies the happiness of the king in their welfare his welfare. The king shall not consider what pleases himself as good whatever pleases him subjects is only good for him.)

As India attained freedom, the framers of the constitution sought to unite the vast country with its great diversity of languages and creeds within a common bond of constitutional justice based on the great ideals of liberty, equality, fraternity and justice.

It is apt to note that our compassionate, organic and rights-based Constitution was drafted at the same time as the Universal Declaration of Human Rights. The words used in the Preamble of our Constitution capture and epitomize the human rights in their conceptual quintessentiality. The basic concept gets further accentuated in Fundamental Rights and Directive Principles of State Policy. The human rights inhered in constitutional provisions and the Protection of Human Rights Act, 1993, with the passage of time, have gained immense signification and the judiciary has invented new tools to balance and secure the human rights in many a sphere. The result is the expansion of the rights both jurisprudentially and practically to attain the constitutional vision of justice as conceived of by our founding fathers. They have been

pyramided such rights as every human being everywhere at all times is entitled to have.

Our Constitution is the greatest document on human rights in many a form. In ***Kesavananda Bharati***<sup>1</sup> it has been stated that Parts III and IV of the Constitution essentially form the basic element of the Constitution without which its identity will completely change. A number of provisions in Parts III and IV are fashioned on the U.N. Declaration of Human Rights. It has been observed that rights mainly proceed on the basis of human rights. Emphasis has been laid that whether one calls it natural or gives some other name, basically it is to secure the requisite human rights, i.e., liberty and equality and secure justice, political, social and economic rights mentioned in the Preamble because these rights are inherent in the genus of human rights. It is interesting to note that it has been stated therein that the Declaration of Human Rights may not be a legally binding instrument but it shows how India understood the nature of human rights.

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<sup>1</sup> (1973) 4 SCC 225

Emphasizing on the integrated scheme and the grand amalgam of the Fundamental Rights and the Directive Principles of State Policy and what our Constitution visualizes, the Court in *Maneka Gandhi*<sup>2</sup> stated that there can never be a divorce between the natural law and the constitutional law, as such a divorce would be disastrous because that would corrode the inherent or natural human rights of an individual recognized by and embodied in our Constitution.

In *Minerva Mills Ltd.*<sup>3</sup> it has been lucidly stated that the relationship between the civil and economic rights is one of interdependence. The Court, by stating the concept of principle of interdependence, has established the holistic and integrated nature of all human rights and the human rights have been placed at the centre of Indian polity to be used as an instrument to achieve social justice. Needless to emphasise, social justice deals with all aspects of human life. Harold J. Lasky remarked, "The more equal are the social rights of citizens, the more likely they are to be able to utilize

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<sup>2</sup> (1978) 1 SCC 248

<sup>3</sup> AIR 1980 SC 1789



their freedom in realm worthy of exploration". The purpose of social justice is to maintain or to restore equilibrium in the society and it envisages equal treatment of equal persons in equal or essentially equal circumstances. Social solidarity is brought by enforcing the concept of social justice, and that is achieved by galvanizing human rights. Roscoe Pound, a sociological jurist whose writings have virtually opened new vistas in the sphere of justice, stated that 'justice meant not as an individual or idea relations among men but a regime in which the adjustment of human relations and ordering of the human conduct for peaceful existence'.

Let me first focus on liberty. The concept of liberty has been treated as a human right apart from being a Constitutional right. It is to be borne in mind that no one would like to barter it for all the tea in China or for all the pearls of the sea. Liberty has inseparable nexus with every ligament of heart. It is an electric light. Not for nothing great English Poet H.L. Mencken has said, "where liberty dwells, there is my country."

In *Mehmood Nayyar Azam* (supra) the Court, addressing the factum of mental torture in the case of a person in custody, observed that inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted to cause humiliation and compels a person to act against his will or conscience. Torture is not merely physical but may even consist of mental and psychological torture calculated to create fear to submit to the demands of the police. Right to reputation is a facet of the right to life of a citizen under Article 21 of the Constitution. Any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of the law protects the dignity of a citizen in a society governed by law. A citizen while in custody is not denuded of his fundamental rights under Article 21 of the Constitution. The restrictions imposed must have the sanction of law by which his enjoyment of fundamental rights are curtailed but his basic human rights

are not crippled so that police officers can treat him in an inhuman manner. On the contrary, they are under an obligation to protect his human rights and prevent all forms of atrocities. A convict of a crime while in prison is not reduced from being a person to a non-person. Any form of torture or cruelty or ill-treatment falls within the inhibition not only under Article 21 but also violates the human rights. In fact, the Court has granted compensation where custodial death or custodial torture has been proven by taking recourse to public law remedy.

Now coming to property and human rights, I may refer to the recent observations of the Court in ***Tukaram Kana Joshi***<sup>4</sup> wherein it has been opined that the right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though it is not a basic feature of the Constitution or a fundamental right, yet human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now, however, human rights are gaining an

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<sup>4</sup> 2012 (11) SCALE 4

even greater multi faceted dimension. The right to property is considered very much to be a part of such new dimension. In the said case, distinction was made between a subject of medieval India and a citizen under our Constitution.

Gender justice is absolutely and inseparably linked with human rights. The World Conference on Human Rights, 1993 at Vienna condemned gender based violence and all categories of sexual harassment and exploitation. A part of the Resolution reads thus: -

“The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community... The world conference on human rights urges

governments, institution, inter-governmental and non-governmental organizations to intensify their efforts for the protection of human rights of women and the girl-child.”

In **S. Samuthiram**<sup>5</sup> the Court observed that every citizen in this country has right to live with dignity and honour which is a fundamental right guaranteed under Article 21 of the Constitution of India. Sexual harassment like eve-teasing of women amounts to violation of rights guaranteed under Articles 14, 15 as well.

In **Suchita Srivastava**<sup>6</sup>, the Court, while dealing with the reproductive rights of a victim of crime, referred to the norms developed in the realm of international law. It relied on the principles contained in *United Nations Declaration on the Rights on the Rights of Mentally Retarded Persons, 1971 [G.A. Res. 2856 (XXVI) of 20 December, 1971]*, wherein it has been stated that a mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings. I

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<sup>5</sup> AIR 2013 SC 14

<sup>6</sup> AIR 2010 SC 235

have only referred to the same to highlight how the Court has proceeded to put the human rights at the highest pinnacle.

Recently, in ***Charu Khurana v. Union of India***<sup>7</sup> the Court held that all practices derogatory to the dignity of women are to be renounced. Be it stated, dignity is the quintessential quality of a personality and a human frame always desires to live in the mansion of dignity, for it is a highly cherished value. The Court observed:

“The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity.”

Another important aspect which assumed significance is relating to female foeticides wherein the court in ***Voluntary***

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<sup>7</sup> (2015) 1 SCC 192

**Health Association of Punjab**<sup>8</sup> opined that every woman who mothers the child must remember that she is killing her own child despite being a mother . That is what abortion would mean in social terms. Emphasis was laid on the reduction of sex ratio and the context of human rights.

Right to education has been regarded by the court as a human right. I am not referring to what has been envisaged under Article 21A of the Constitution and Right to Education Act, 2009. Emphasis is on human rights. In **Election Commission of India v. St. Mary's School and others**<sup>9</sup> it has been ruled as follows: -

“The Human Rights Conventions have imposed a duty on the contracting States to set up institutions of higher education which would lead to the conclusion that the citizens thereof should be afforded an effective right of access to them. In a democratic society, a right to

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<sup>8</sup> (2013) 3 Scale 195

<sup>9</sup> (2008) 2 SCC 390

education is indispensable in the interpretation of right to development as a human right. (See *Leyla Sahin v. Turkey*<sup>10</sup>.) Thus, right to development is also considered to be a basic human right.”

Right to health was recognized as an integral part of the Right to Life. In ***Consumer Education and Research Centre***<sup>11</sup>, the Court was concerned with the occupational health hazards faced by workers of the asbestos industry. Noticing that long years of exposure to harmful substances like asbestos could result in debilitating asbestosis, the court mandated the provision of compulsory health insurance for every worker as enforcement of the worker’s fundamental right to health. In ***Murli S. Deora***<sup>12</sup> the Court prohibited smoking in public places in the entire country on the ground that smoking is injurious to the health of passive smokers and issued directions to the Government to take effective steps to

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<sup>10</sup> Decided by the European Court of Human Rights on 10<sup>th</sup> November, 2005

<sup>11</sup> (1995) 3 SCC 42

<sup>12</sup> (2001) 8 SCC 765



prohibit smoking in public places. In ***Parmanand Katara***<sup>13</sup>, the Court was confronted with the situation where hospitals were refusing to admit accident victims and were directing them to specific hospital designed to admit 'medico legal cases'. The Court held that this violated the right to life as the right would be rendered illusory if a citizen could be refused emergency medical treatment on account of an administrative arrangement between hospitals.

Right to shelter has become a facet of human right. In ***Gauri Shankar***<sup>14</sup>, *the right to shelter* was recognized as a fundamental right under Articles 19(1)(e) and 21 and it was observed that "the difference between the needs of an animal and a human being for shelter has to be kept in view. For the animal it is bare protection of the body while for the human being it has to be a suitable accommodation which would allow him to grow in every aspect – physical, mental and intellectual. The Constitution aims at ensuring fuller

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<sup>13</sup> AIR 1989 SC 2039

<sup>14</sup> (1994) 6 SCC 349

development of every child. That would be possible only if the child is in a proper home".

In **Chameli Singh**<sup>15</sup>, the Court ruled thus:

"In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilized society...."

It further proceeded to observe:

"Right to shelter when used as an essential requisite to the right to live should be deemed

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<sup>15</sup> (1996) 2 SCC 549

to have been guaranteed as a fundamental right. As is enjoined in the Directive Principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organized civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be a useful citizen and equal participant in democracy.

The ultimate object of making a man equipped with a right to dignity of person and equality of status is to enable him to develop himself into a cultured being..."

It may be interesting to note that Madhya Pradesh Human Rights Commission had preferred a writ petition for

grant of implementation of its recommendation and further to grant compensation to the people who had suffered sheer blindness in an eye camp organized by the State Government. The High Court, referring to Section 17(1) of the Protection of Human Rights Act, 1993 and the concept of public remedy, repelled the stand put forth by the counsel for the State that the Commission cannot canvass the case of the persons who had lost their eyesight and proceeded to state that person in his individual capacity has the entitlement to be protagonist in his own life, but the life appears to be not worth living when one has become half blind. There may be cases, when total vision is lost. But in that case nothing has been shown that they were totally without vision. The State organizes the eye-camps to help people to recover from eye problems. The people go there with hope and aspiration that there would be successful operation of the cataract and they will get back the full vision. The hopes harboured in the bottom of the heart has been crucified by sheer negligence and crude callousness of the people who carried the operation. Thereafter, the Court proceeded to observe that there had been no post operational

care and total slackness which gave rise to spreading of infection and, accordingly, granted compensation.

Privacy underpins human dignity and other key values such as freedom of association and freedom of speech. It has become one of the most important human rights issues of the modern age. Privacy is a fundamental human right recognised in the UN Declaration of Human Rights, the International Covenant on Civil and Political Rights and in many other international and regional treaties. Realizing the the significance and going in tune with world order the Supreme Court nine-judge bench unanimously in ***Justice J.S.Puttaswamy***<sup>16</sup> has ruled that right to privacy is intrinsic to life and liberty and thus comes under Article 21 of the Indian constitution.

I must unhesitatingly state that the National Human Rights Commission is addressing to the different facets relating to human rights such as custodial violence and torture; custodial death both in judicial custody and police

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<sup>16</sup> (2017) 10 SCALE 1

custody; death in Government home; unlawful arrest , illegal detention and torture; Police High - Handedness; Police Encounter; Condition in Prison; Electrocution Cases; Natural Calamities; Right to Health; Functioning of Mental Health Institutions; Right to Food; Right to Education; Rights of Scheduled Castes, Scheduled Tribes and other vulnerable groups; Rights of Human and Children; Rights of Elderly Person; Rights of Person with Disabilities; Human Rights Education, Training and awareness; and International Cooperation amongst National Human Rights Institutions. The work done by it in the field of eradication of child labour and bonded labour, creating and ensuring access to rights by children, women and people living on the margins of society, and public health, etc. is commendable.

I congratulate the Hon'ble Chairman, members and others on this day of celebration of the Foundation Day and sincerely hope that the activities shall get accentuated as the time rolls by and all of us shall always be eager to witness the day to day progress.

In conclusion, I would like to say that everyone in this country is expected to say with certainty that I am a human and whatever concerns humanity is of interest to me, for it is essential not to live one's life but to live and respect others because it is exquisitely beautiful to all and one cannot afford to shatter the life of another. Sensitivity inheres in mutual respect and protection. That should be the barometer as well as stem of human life.

Thank you.