

# HUMAN RIGHTS, DEMOCRACY AND HUMAN DIGNITY: 70 YEARS OF UNIVERSAL DECLARATION OF HUMAN RIGHTS HUMAN RIGHTS: GLOBAL Vs LOCAL

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## Abstract

*In India, the concept of Human Rights can be seen with human existence as the people have been believing in the service to 'Nar Narayana' which is the best example of following human rights. Reference of existence of human rights can also be seen in Vedas and Upanishads where the basic human rights such as equality and dignity of the individual with duty towards others has been promoted.*

*However, the concept of Human Rights was universally recognized by the United Nations in the Universal Declaration of Human Rights (UDHR) 1948, but the United Nations believes its existence since 539 BC when Cyrus the Great established racial equality by releasing the slaves after conquering Babylon, declaring that all people had equal right to choose their own religion.*

*With development of civilization, global community at large has been redefining the concept of Human Rights, enlarging its implications in the various facets of the civilized human society, exhausting every option to recognize and uphold the human dignity. Indian jurisprudence has also been trying to keep pace with the global community in recognising and upholding the human dignity in the statute books, implications/ execution.*

*The global community has very successfully established human rights protection agencies and mechanisms such as UNESCO, NICEF, ILO, WHO, FAO, International Court of Justice and International Criminal Court. At regional level also the efforts have been remarkable in restoring the basic human rights by constituting regional human rights courts/ commissions; European Court of Human Rights, Inter-American Court of Human Rights, African Commission on Human and People's Rights, Arab Court of Human Rights, Cairo Declaration on Human Rights in Islam, 1990 and Asian Human Rights Charter. The regional human rights courts have been not only very successfully redefining the human rights concepts but also compensated the victims of human rights violations. Whereas, in India the basic human rights have been incorporated as the fundamental rights in the Constitution of India. Further, the enactment of Protection of Human Rights Act, 1993 and as Amended by the Protection of Human Rights (Amendment) Act, 2019. It provides for the National Human Rights Commission and State Human Rights Commissions which have only power to make recommendations. It also provides for specifying a Court of Session as the Human Rights Court for speedy trial of offences arising out of violation of human rights. However, the results of human rights court in each district. But, hardly some valuable and effective contribution may be seen from the agencies/ mechanisms of human rights in India. Therefore, it is required that some effective mechanism/ agencies with tooth and nail is formed allowing to contribute on ground extending relief by way of compensation and fair trial in the cases of human rights violations.*

**KEYWORDS:** Global Community, Civilization, Racial equality, Upanishads, International Court of Justice

## INTRODUCTION

Human Rights are the rights which are inherited from the nature much before the birth, i.e. from the time when the child takes his first breath in mother's womb. Human Rights are universally protected inalienable and immutable rights which cannot be abrogated even by the statutory force. The Statute has only role to protect these inalienable human rights from illegal infringement, invasion or abrogation. Though this right having been recognised in India from the primitive time in the concept of service to 'Nar Narayana', however, its universal recognition can be found with inheritance of Universal Declaration of Human Rights, 1948 by the 'United Nations' which is the universal forum for protection of the Human Rights.

### United nations and human rights

Though, the Human Rights have been recognised in India from the primitive time and in Europe with the Magna Carta, but the protection of human rights was not binding upon the states due to which Human Rights abuses were a common incident happening around the world leaving the victims of human rights abuse with no statutory remedy. Most commonly the people down the line in the society i.e. poor and destitutes and vulnerable groups have always been prone to human rights abuses. Protection of Human Rights and Fundamental Freedoms germinated in the Atlantic Charter 1941 and in the Declaration of United Nations, 1942, followed by an outcome of the International Bill of Human Rights, United Nations Charter and appointment of the Drafting Committee in January 1947 for the drafting of Bills of Rights. As a result of the efforts of United Nations, the Universal Declaration of Human Rights was adopted in 1948 as a milestone in the protection of human rights. Thereafter, a series of such human rights protection mechanism have been propounded at the global level, few having legal implications at the international level. Some of the internationally developments for the protection of human rights are as under;

### **Universal Declaration of Human Rights, 1948**

However, the Declaration of Human Rights, 1948 did not have legal binding on the states as far as giving effect to its provisions at the state level is concerned, but Indian Constitution have adopted its maximum provisions as Fundamental Rights. However, the provisions have now become generally accepted principle of law at the international level.

Though, we have adopted extensive range of resolutions and the covenants on the protection of human rights at the international level, but such resolutions and the covenants need mechanisms as a watch dog for its effective implementation at local and global level.

### **Need for mechanism for human rights protection**

Rules are not respected and implemented without a deterrence of being punished for its violation. It is expected for the human dignity that the human rights abusers are punished sufficiently setting up an example for others refraining from getting involved in such acts of human rights abuse. Further, the interpretation of human rights abuse requires a strict interpretation as far as drawing the line of human rights factors. Therefore, the mechanism developed as watch dogs and for its enforcements, requires to have complete independence from the state interference and complete absence of even an iota of such state intervention in whatsoever manner.

Also such mechanisms are required to have judicial authority. Therefore, its selection process also requires to be free from any bias and any kind of interference from the concerned state machinery.

### **Human rights protection agencies/ mechanisms at global level**

After all, it is the individual who is victimised of the human rights violations specially when it is abused/ violated by the respective state, this paper is restricted to the very specific question; whether the individual grievance of human rights violation by the state which is not being addressed by the Apex Court for whatsoever reasons in India, deserves to be addressed by the international forum for giving actual meaning to the human rights of each individual, specially when it has been alleged by the Hon'ble Judges of the Supreme Court itself that the judiciary is not independent in all cases and under the circumstances when the Hon'ble Apex Court itself reverses its order on the same issue/question of law leaving the fact that the at least one of the two petitioners in these two opposite ruling of the Apex Court, have been denied justice by the Apex Court for permanent because there is no such independent judicial forum for the citizen of India to address its grievance against the order passed by the Hon'ble Apex Court. Therefore, this paper is an effort to bring out the facts of the issues involved.

### **International Court of Justice (ICJ, -)<sup>1</sup>**

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations (UN). It was established in June 1945 by the Charter of the United Nations and began work in April 1946.

The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York (United States of America).

The Court's role is to settle, in accordance with international law, legal disputes submitted to it by States and to give advisory opinions on legal questions referred to it by authorized United Nations organs and specialized agencies.

The Court is composed of 15 judges, who are elected for terms of office of nine years by the United Nations General Assembly and the Security Council.

### **Jurisdiction of ICJ**

International Court of Justice is also known as world court. It enjoys the jurisdiction in following aspects;

1. In the disputes referred by the states

The ICJ basically exercises its jurisdiction in accordance with international law that too in contentious cases only which are referred by the states. One such recent case is the case of Kulbhushan Jadhav against Pakistan which was placed before the ICJ by the Republic of India. The case was heard and decided accordingly by the ICJ.

2. Advisory jurisdiction to render advise to the organs of the United Nations on legal questions. Therefore, considering the jurisdiction of the ICJ, it is clear that the individual aggrieved by the order of the highest Court in the nation does not have any remedy for human rights abuse by the state. The jurisdiction of the ICJ itself gives a discretion to the state to select the cases for representation before the ICJ which at times have been in the best calculated to justice but in any stretch of imagination such discretion does not provide remedy to the personnel aggrieved by the human rights abuse by his state as the jurisdiction of the ICJ is not open for entertaining the case on the call of the individual.

<sup>1</sup> <https://www.icj-cij.org/en/court>

### Regional courts of human rights

1. EUPOREAN COURT OF HUMAN RIGHTS
2. INTER-AMERICAN COURT OF HUMAN RIGHTS
3. AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS
4. ARAB COURT OF HUMAN RIGHTS

#### EUPOREAN COURT OF HUMAN RIGHTS

European Court of Human Rights which is also known as "Strasbourg Court" is functional since 1959 created under the auspices of the Council of Europe. The ECHR has given more than 10000 judgments relating to alleged Human Rights Violations since its functioning.

The ECHR enjoys jurisdiction over the written complaints (applications) submitted by the individual as well as the state parties regarding violations of the European Convention on Human Rights.

In *Szurovecz Vs Hungary* ECHR application no. 15428/16 (ECHR, 2019)<sup>2</sup> judgment delivered on 09 October 2019, the question before the Chamber was whether Article 10 (Free of Expression) of the European Convention of Human Rights have been violated by the state?

The case concerned media access to reception facilities for asylum-seekers. The applicant in the case, a journalist for an Internet news portal, complained about the authorities' refusal of his request to carry out interviews and take photographs at the Debrecen Reception Centre, thus preventing him from reporting on the living conditions there. The Court stressed that research work was an essential part of press freedom and had to be protected. The Court being unsatisfied with the summary reason given by the regarding possible problems for the safety and private lives of asylum-seekers, for their refusal, without any real weighing up of the interests at stake, the court was not convinced that restricting the applicant's ability to carry out such research work, which had prevented him from reporting first-hand on a matter of considerable public interest, namely the refugee crisis in Hungary, had been sufficiently justified.

In another case, *Case of LISPUCHOVÁ AND LISPUCH v. SLOVAKIA*, ECHR Application no. 21998/14, decided on 15.10.2019<sup>3</sup>,

*"Declaring the application admissible the ECHR held as under;*

- Holds that there has been a violation of Article 6 § 1 of the Convention;
- Holds

(a) that the respondent State is to pay the applicants jointly, within three months, EUR 331.12 (three hundred and thirty-one euros and twelve cents), plus any tax that may be chargeable to them, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

- Dismisses the remainder of the applicants' claim for just satisfaction."

Apart from this, there are end number of cases where the individual has been granted relief by the European Court of Human Rights against the arbitrary and illegal actions of the state parties.

#### INTER-AMERICAN COURT OF HUMAN RIGHTS

It is the judicial organ of the Inter-American human rights system. The Court's mandate is more limited than that of the Commission because the Court may only decide cases brought against the Organization of American States Member States that have specifically accepted the Court's contentious jurisdiction and those cases must first be processed by the Commission. Additionally, only States parties and the Commission may refer contentious cases to the Court. Inter-American Court of Human Rights is the judicial institution established by the Organization of American States in 1979 for interpretation and enforcement of the provisions of American Convention on Human Rights.

<sup>2</sup> <https://www.echr.coe.int/Pages/home.aspx?p=home>

<sup>3</sup> <https://hudoc.echr.coe.int/eng#%7B%22languageisocode%22:%5B%22ENG%22%5D,%22documentcollectionid%22:%5B%22JUDGMENTS%22%5D,%22itemid%22:%5B%22001-196611%22%5D%7D>

**AFRICAN COMMISSION ON HUMAN AND PEOPLE'S RIGHTS**

African Court of Human Rights and People's Rights is a continental court established by African Countries to ensure protection of human and people's rights in Africa.

The Court enjoys jurisdiction over the states ratifying the Court's Protocol. The Court entertain the cases and disputes concerning the interpretation and application of the African Charter, Court's Protocol and any other human rights treaty ratified by the state concerned.

The following entities are competent to submit communication to the Court;<sup>4</sup>

- The African Commission
- State parties to the Court's Protocol
- African Inter-governmental Organizations
- NGOs with observer status before the Commission
- Individuals

It is apparently clear from the jurisdiction of the Court itself that the individual grievances against the concerned state is heard and decided by the Court. Few cases where the relief has been provided against the concerned state as under;

In *Egyptian Initiative for Personal Rights and Interights v. Arab Republic of Egypt*, 1 March 2011, ACHPR, 334/06, 9th Extra-ordinary Session<sup>5</sup>, the complainants brought the complaint on behalf of Mohamed Gayez Sabbah, Mohamed Abdalla Abu-Gareer and Ossama Mohamed Al-Nakhlawy (the victims), alleging that they were detained, tried, and sentenced to death after being accused of the 2004 and 2005 bombings in Sharm El-Sheikh and the "Taba bombings."

Given that the victims provided evidence of marks on their bodies indicating torture, and that the state made no attempt to give any satisfactory explanation of how the injuries were sustained, the commission concluded that the marks could only have been inflicted by the respondent state. The commission found overall that the action of the respondent state constituted multiple violations of article 5 of the African Charter, which covers not only torture, but also cruel, inhuman or degrading treatment. The commission found the Supreme State Security Emergency court's independence was compromised due to the executive influence over its proceedings, violating article 7 of the African Charter. The respondent state violated Article 7(1)(a) by denying the victims the right to appeal the decision of the Supreme State Security Emergency Court. The commission found a violation of article 7(1)(c) noting that the victims had been denied access or had not been granted timely access to a lawyer. It held that the degree of control which the president exercised over the composition, conduct, and outcome of proceedings of the State Security Court did not guarantee an independent and impartial judicial process within the meaning of article 7(1)(d) of the charter. The commission further found that article 26 had been violated due to the court's lack of impartiality. The commission found that although the implementation of the death sentence after an unfair trial violates article 4, it held that the latter provision has not been violated here, as the victims had not been executed but were still in the custody of the respondent state.

In *Tsatsu Tsikata v. Republic of Ghana April-May 2014*, ACHPR, 322/06, 55th Ordinary Session<sup>6</sup>, Tsatsu Tsikata, brought the communication against the Republic of Ghana. The complainant alleged that the respondent state was trying him retroactively for an act that did not constitute an offence at the time of the commission. He was arraigned before a "Fast Track Court" after being summoned to appear "in the name of the president." The complainant alleged that the respondent state breached the independence of the courts through public statements made by the spokespersons of the president and the attorney general, questioning the initial decision of the Supreme Court (which was in the complainant's favour) and subsequently appointing a new Justice to review the Supreme Court decision. The Complainant therefore alleged violations of articles 7(1) (b), (c), 7(2), and 26 of the African Charter.

Regarding alleged violations of article 7 (1)(b), the commission was not convinced that the Fast Track Court's failure to provide reasoning for its ruling entailed a violation of the complainant's right to be presumed innocent.

<sup>4</sup> <https://www.achpr.org/afchpr/>

<sup>5</sup> Case digest of Decision of African Commission on human and People's Rights by Open Society Foundation, 224 West 57th Street, New York, New York, 10019, United States

<sup>6</sup> Case digest of Decision of African Commission on human and People's Rights by Open Society Foundation, 224 West 57th Street, New York, New York, 10019, United States



In relation to article 7(2) of the African Charter, the commission found that the particulars of the charge of 'willfully causing financial loss to the state' occurred after Section 179A (3)(a) of the Criminal Code (criminalizing willfully causing loss to the state) came into force.

The commission did find a violation of article 26 of the African Charter due to a series of concerted actions taken by the executive directed towards a desired outcome on the review of the Supreme Court's earlier decision on the constitutionality of the Fast Track Court. It held that those actions, including what appeared to be a "targeted appointment of a Justice of Appeal and a strategic reconstitution of the Supreme Court", amounted to a "tacit escalated interference with the independence" of that court.

Therefore, it is clear that even the individual person in Africa have an independent, impartial and effective neutral judicial platform to represent his case against the order passed by the highest court of his nation, questioning it's independence and questioning the order on it's merits or the position of law, which is clearly neutral in it's position and power.

#### **HUMAN RIGHTS PROTECTION AGENCIES/ MECHANISMS AT LOCAL LEVEL**

It is pertinent to mention that the topic of this paper as given by the committee of this International Seminar, somewhere suggests the need for revisiting the need for revisiting the role of human rights mechanism available at the local level in the context whether it has been effectively dealing with the grievances of against the human rights violations. However, from the statistics of Human Rights Complaints received/disposed and pending consideration, displayed on the web site of the NHRC, it is clearly apparent that the state governments in India and the central government is not exception to the abuse of Human Rights.

In India the basic human rights have been incorporated as the fundamental rights in the Constitution of India which are absolute and guaranteed against which writ petitions can be filed either before the High Court of competent jurisdiction or before the Supreme Court.

Apart from this, the enactment of Protection of Human Rights Act, 1993 and as Amended by the Protection of Human Rights (Amendment) Act, 2019, provides for the National Human Rights Commission and State Human Rights Commissions which have power to make recommendations only. It also provides for specifying a Court of Session as the Human Rights Court for speedy trial of offences arising out of violation of human rights. But, hardly some valuable and effective contribution may be seen from the agencies/ mechanisms of human rights in India.

National Human Rights Commission having functioning without teeth and nail, any recommendations even otherwise direction passed by it usually appears to be a futile exercise. Also, there are cases, where it has straightway rejected the complaint in limine contending that the same is a departmental issue.

Further, considering to the approach of the Indian Judiciary whereby the recent crisis in the Apex Court about threat to it's independence in the light of the various orders passed by the Apex Court wherein it has taken very lenient view towards the government, in the case of individual Vs the respective government, there appears a need for an agency which is completely independent from the government and beyond the approach of the government.

Likewise, being very specific to the class which is unrepresented at any front for the human rights abuse by the state on false premises, by arbitrary actions, government not interested in interfering in the affairs of the armed forces, during their service, the Armed Forces Tribunals given the status equivalent to High Court, having functioning under complete control of the government in appointment of the retired judges from the High Court and appointment of the officers retired from the armed forces services in the Coram of Armed Forces Tribunal, who always look for appointment to such positions much before his appointment, independence of the Armed Forces Tribunal and the recognition of human rights of the soldiers is a distant dream.

Further, a series of orders passed by the Apex Court without any reasoning, petitioner being aggrieved by dismissal of the case by unreasoned order, without addressing the question of law raised by him, the petitioner firmly believes his case having strong reasons for consideration by the court for consideration for the questions involved therein, there is a requirement to constitute a human rights court independent from the interference of the government to address the grievances not addressed even at the Apex Court.

Apart from these, it is apparent from the various orders of the Regional Human Rights Courts at global level, the relief given to the petitioner and the recent order passed by the ICJ in the case of Kulbhushan Jadhav against Pakistan and the orders of the Supreme Court itself being revisited and reversed time to time, it is clear that at some occasion the parties losing the case is deprived from justice because, justice apparently seems depending more on the conscience of the individual Hon'ble Judges than the rule position.

**RECOMMENDATIONS AND SUGGESTIONS**

Human Rights being equally inalienable natural rights for the human civilization across the globe, the people at local level in India should also have a representation against the order passed by the highest court for the reason of ultimate relief by the global court. Therefore, following is recommended;

1. Human Rights Courts should be functioning at each District Level.
2. National Human Rights Commission should have it's own manpower and other resources to deal with the complaints.
3. National Human Rights should have the power to direct the respective government and to initiate contempt in case of non-compliance of it's orders.
4. Every order passed by the Supreme Court should be a speaking order addressing each question of law raised in the petition of the victim alleging human rights violation.
5. Like other part of the world, India along with Srilanka, Pakistan, China and other Asean Countries, should form a Regional Human Right Courts for addressing the individual grievances against the respective state allegedly not addressed by the Supreme Court of that nation.
6. International Court of Justice should open it's jurisdiction for individual complaints in exceptional cases even if the same is not forwarded or represented by the respective state.