

VARIOUS FACETS OF HUMAN RIGHTS*

The concept of human rights defies definition. Eminent jurist and

human rights activist, late Nani Palkhivala said – “to attempt to define human rights definitively, would be merely to illustrate how the human mind tries, and tries in vain, to give a more precise definition than the subject-matter warrants. Human rights may be summed up in one word – “liberty”.....there are more than 200 definitions of liberty; and Abraham Lincoln observed, the world had never had a good definition of liberty.”¹ The concept of human rights has surpassed all other hitherto known concepts of rights such as civil rights, constitutional rights, fundamental rights and so on. ‘Human rights’ – conceptually and jurisprudentially – stands taller of all these. The third generation human rights are the (i) the right to peace, (ii) the right to development, (iii) the right to a healthy environment, (iv) the right to enjoy the common heritage of mankind, and (v) the right to humanitarian assistance.² In other words, the human rights consists in the obligation of present generation not only to human beings of today, but also to human beings who have ceased to be living and to the human beings who are yet to be born; the last of these is called the law of sustainable development.

To a humble person like me, human rights is just one human-being caring for another human-being in accordance with accepted human values. Human rights is securing human dignity for human body and human soul. The basic human right enables the human body and soul, living together, and in its elated sense, human rights is the human body and the human soul – both living together and with dignity.

Any conference or seminar on human rights by human-beings sounds to me a little paradoxical or associated with cynicism. The biggest violator of human rights of one human being is just another human-being – acting individually or collectively as State. I have heard of the animal rights being violated by human-beings and cruelty being inflicted on animals by man; but I have never heard of any animal as perpetrator of human rights violations. Palkhivala mentions of a zoo at Lusaka where there is a cage where the notice reads – “the world’s most dangerous animal” and inside the cage there is no animal but a mirror where you see yourself.³

We are at the entrance of the new millennium just having stepped into therein. The twentieth century has witnessed unbelievable progress in the field of science and technology. Man has landed on Moon and Mars. At the same time, most sophisticated weapons have been invented either for being used against man or for defending human-beings from attack by another set of human-beings. On the one hand, we talk of globalism and at the same time we can witness our consciousness getting individualized or self-centered, moving away from universal consciousness. Spirituality persuades us into believing progression on the ladder of *Karma* by being associated with good action. *Geeta* says that one who does good things in life moves up the ladder. But in action we fail to understand why we have landed ourselves into a state of affairs where we have started believing that the cure for the malaise of human rights’ violation lies in similar violation though in a different way. The emergence of militancy and insurgency has persuaded us into believing that those who are accused or suspected of having perpetrated any crime do not have any human rights and violence can be suppressed by violence (i.e. by violating

the human rights of the violators). It is unfortunate, but then it is the truth, that the preceding century – inspite of being a century of achievements – also enjoys the dubious distinction of being the bloodiest of all the times. We have seen the world powers running amuck against each other. For us, as individuals, the crisis of character and subordination of basic human instincts and values are the gifts given to us by the preceding century. Today, in the society in which we live the human rights are most fragile and transient. Martin Luther King (Junior) said – “the means by which we live have out-distanced the need for which we live. Our scientific power has out-turned our spiritual power. We have guided missiles and misguided man.”⁴ That is the world. And, what about our own country? “The most persistent tendency in India has been to have too much Government and too little administration; too many laws and too little justice; too many public servants and too little public service; too many controls and too little welfare.”⁵

Friends, I do not propose to open with a note of pessimism in an event which is bustling with your enthusiasm and optimism. I am, indeed, more than joyous to witness such an assemblage of legal gathering of legal fraternity, consisting of persons obsessed with dedication, determination and desire to do something for the service of humanity, as much as they can, as individuals and professionals. During these three days seminar, you will be discussing the International Treaties, Charters, Declarations and Conventions. As a student of Constitution of India, I wish to invite your attention to this great document which, in my humble opinion, is the greatest Charter of human rights. If we can just learn and translate into action the Preamble to the Constitution of India we have reached the avowed target of establishing an order which will be a boon to human rights and a bane to violators. The Preamble is a solemn resolution to secure to all citizens (and then to all human beings) justice – social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote fraternity, assuring the dignity of the individual and the unity and integrity of the nation. Having read the Preamble I ask a question to myself – What more remains to be said and done in the name of human rights? Added to the Preamble is the Chapter on Fundamental Rights. Articles 14, 15, 19 and 21 need a mention in particular. Then there are the Directive Principles of State Policy which speak of securing a social order for the promotion of welfare of the people, equality, equal justice, free legal aid, right to work, to education and to public assistance, provision for just and humane conditions of work and so on. Assuming anything was yet left out, the lacuna was removed by 42nd Amendment, introducing the concept of fundamental duties into the Constitution which speaks, amongst other things, of the promotion of harmony and the spirit of common brotherhood, renouncing practices derogatory to the dignity of women and striving towards excellence in all spheres of individual and collective activity – all as our fundamental duties. In one line, the fundamental duties seek to achieve for every citizen of India a better status from a human-being to a better human-being, endowed with human values. I hope this seminar succeeds in persuading the legal professionals into concentrating upon our own constitutional values to achieve in building a society where the human rights are upper-most in the mind of the citizens and the State.

If human rights have to have any meaning and any proposition, it is the legal profession which shall have to realize its obligation. There is a serious inter-connection between human rights and legal profession which consists of an impartial, independent and active judiciary on the one hand and an independent, bold and vigilant Bar on the other hand. All taken together can contribute to the survival, strength and meaningful existence of each other. Historically, the legal profession is the watch-dog and promoter of human rights. Human rights can afford to exist only in a society which lives by the rule of law and the rule of law, in its turn, survives and sustains only in a society where the judges and lawyers are righteous and have conscience.

We live in the land of Mahatma Gandhi as citizens of a nation which is Mahatma's legacy to us. Gandhi used to say – ask not what the country and your fellow beings can do for you; do ask what you can do for your motherland and for your fellow beings. Any gathering of the members of legal fraternity – of lawyers and judges – is often interested in finding out what they deserve from the society and may be there is nothing wrong about it, in a way. However, in the land of Mahatma we should think what we can give to the society. We are what we are today because of what the society has given to us. We have to repay the obligation of the society. By Indian philosophical belief, the secret of progression is introspection. Away from the bigger issues, I would request this august audience to devote a little out of their very busy schedule to a very simple question which I propose to put-forth for your kind consideration. Do we ourselves violate human rights? Are we – individually or professionally – perpetrators of any violations, whether consciously or unwittingly.

In my opinion, a judge violates human rights on four occasions – when he compromises with punctuality, probity, promptness and patience. A judge who sits later or rises earlier than the appointed time violates the human rights of people in waiting. The *sine qua non* of our justice dispensation system is listening to both the sides with patience as it is the human right of the litigants and the lawyers representing them. A delay in delivery of decision is subversive of the human right of the parties to that case. And, needless to say, a judge who compromises with integrity and objectivity is the biggest perpetrator of human rights violation.

So is with the members of legal profession. A legal practitioner, in my humble opinion, violates the human rights of a judge when he appears in a case, unprepared or is discourteous. He violates the human right of seekers of justice if he seeks an adjournment – not justified, adopts a delaying tactic because his client stands to gain thereby, proceeds on strike, holding the justice delivery system almost to ransom, charges fee totally disproportionate with the concept of service and does not observe the rules of professional ethics. Forgetting for a moment the high sounding issues, I feel we will be doing the greatest service to the society if we can get-over all these frailties and take a vow to serve the society by maintaining the highest standards of the profession to which we belong.

Apart from these issues which concern ourselves as legal professionals, it hardly needs any emphasis to say that in the evolution of civilization and constitutional democracies of the world, the humanity has entrusted to the legal professionals a task of acting as watch and ward of human rights. The Papers presented at this seminar by the stalwarts of legal profession and human right activists and free and frank exchange of views would certainly go a long way in better-equipping ourselves for meeting the upcoming challenges of the new millennium. I am confident that this seminar at the end of three days would send a message to humanity that 'yes, you can depend on us'. At the end of three days we shall adjourn with a vow that the independent, vigilant and watchful members of legal profession shall never tolerate – and certainly not be a privy to – any violation of human rights, in any manner, at any place.

It is time to think, to deliberate and to act. The humanity is looking up at legal profession with high hopes. We have to come up to their expectations. Remember what John F. Kennedy said – 'If we make peaceful evolution impossible, we make violent revolution inevitable'.

I take your leave by quoting the eloquent and forceful message in the words of Justice Krishna Iyer⁶—

"Pardon me for projecting,.....a perspective of professional services where law is no esoteric art or elite mystique but sets itself to raise the quality of life of the harrowing humans, invest, dignity in every individual how-low-so-ever, evolve, a developmental rule

of law where man – every man – matters and promote an egalitarian order which will ensure economic equity to all citizens, in the sense of full and free unfoldment of the potential of every person, and thus vitalizes the social system. To reduce deadening disparities, eradicate absolute poverty and create, through people’s participative processes, a moral-material community model based on a secular texture and scientific temper – in short, a socialist, spiritual culture which blends the anti-exploitative values of Mahatma Gandhi.....and integrates the sublime humanism of the Constitution with the Third World pragmatism of national reconstruction enlivened by social conscience.....That consummation is our goal. That affirmation is what I conceive to be the mission of lawyerly patriotism or the *people factor* in the rule of law.....our job (is) once onerous and nationalist, creative and crusading. After all, to be the pall-bearers of the old order and the torch-bearers of the new order is the functional challenge to the lawyer and judge in the contemporary context of poignant change.”



* Inaugural speech delivered at Three Day Seminar on “Various Facets of Human Rights” at Vishakhapatnam, on 27th March, 2004.

1. Human Rights in the Changing World, Ed. By Justice E.S. Venkataramiah, p. 163.
2. *Ibid.*, p. 358.
3. Human Rights in the Changing World, Ed. By Justice E.S. Venkataramiah, p. 164.
4. As quoted in – Human Rights and the Law – Justice VR Krishna Iyer, p. 93.
5. N.A. Palkhivala, in Bhavan’s Journal, Aug. 15, 2001 at p. 214.
6. Human Rights and the Law, *ibid*, pp. 204-205.