

HUMAN RIGHTS - CHALLENGES TODAY

By

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My heart bleeds when I see what man
has done to Man

“Man a inhumanity to man.

Makes countless thousands mourn”.

Is the outraged burst of the anguished heart
of *Robert Burns*.

Dramatizing in inimitable mockery of Man,
is pride, vanity and assumed self importance,
Shakespeare lamented in his poetic excellence.

“But Man! Proud Man dresst in brief
little authority strut like a clown - playing
fantastic tricks before high heavens that
make angels weep”.

“I am a man and nothing pertaining to
man is alien to me” professed *Karl Marx*.

Philippine Jurist of Eminence, *Jose N. Diokno* observed that “No cause is more worthy
than the cause of human rights. Human rights
are more than legal concepts: They are the essence
of ‘Man’. They are what make man human.
That is why they are called human rights”.

P.B. Mukherji in “Culture Heritage of India”
(Volume II Pages 434 - 435) referred to the
case of *Anadha Pindika v. Jeta* cited and
reported in *vinayapitika*. A prince and a private
citizen submitted their case to a law Court
and the Court decided against the prince.
The Prince accepted the verdict as a matter
of course and as binding on him. The law in
our ancient jurisprudence was above the
sovereign. It was the Dharma that upholds
and sustains humanity in all its coherence,
harmony and happiness based on the
consensual view of the good and learned in
society. The laws then were not regarded so
much as product of supreme Parliaments
and Legislatures as at present.

Certain laws were regarded above all
human authority such as natural laws of human
beings-right to live and survive—, to natural
environs creating conditions, to develop their
true powers and potentialities tuned to a
higher moral order. This ancient thinking of
natural law and the worth of human being
found an echo in the concepts of human
rights of 17th century. Natural law philosophers
like *Locke* and *Rousseau* propounded the theory
of inherent human rights ‘All men are born
free but chained every where’.

In modern times it is widely accepted
that the right to liberty is the essence of a
free society and it must be protected and
safeguarded at all times. The idea of
guaranteeing certain freedoms is to ensure
that a person will have minimum guaranteed
basic and fundamental values out of reach of
transient political majorities.

The concepts of basic rights protects
against apprehension or fear of injustice from
rich and mighty and the excesses of the State
and all its agencies.

Overpowering the hordes of *Hitler* and
hounds of *Nipponese* (Japanese) fifty peace-seeking
leaders adopted and signed the memorable great
Charter on 26th June 1945 in San Fransisco,
which founded the United Nations.

As a prelude for the discussion of the
issue, a glance at the preamble would shed
enough light on the intent and the objective.

“We the people of United Nations
proclaim and declare our determination to
save succeeding generations from the scourge
of war, which twice in our lifetime has
brought untold sorrow to mankind; to affirm
faith in fundamental human rights; in the
dignity and worth of human person; in the

equal rights of men and women and of nations of large and small;

To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained; *etc.*

And for these ends

To practice tolerance and live together in peace with one another as good neighbours *etc.*

The General Assembly of The United Nations adopted and proclaimed "Universal Declaration of Human Rights, consisting of 30 Articles on 10th December 1948, the summum Bonum of which is the recognition of the basic values, that all human beings are born free; equal in dignity and with rights to liberty, security of person; equality before law and freedom from arbitrary arrest, torture, or cruel and degrading treatment or punishment or exile, besides freedoms of conscience and association, to mention a few.

During the British regime in India, human rights were grossly violated by the rulers. Therefore the framers of our Constitution, most of whom had suffered long incarceration under the British had a very positive attitude towards these rights. Accordingly human rights were incorporated in Articles 12 to 35 of Part III of our Constitution. Articles 14, 19, 21, 22 enshrine the spirit of human rights and freedoms. Especially, Article 21 breathes the élan of life and liberty, the expanse of which has been widened by judicial activism to include livelihood with majesty and dignity worthy of a human being. Living is not a mere animal existence. The other freedoms are enshrined in Article 19. Article 22 guarantees the right of freedom from arbitrary arrest, making detention beyond 24 hours of arrest without producing the arrestee before the nearest Magistrate as wrongful confinement this Article further guarantees the right to consult a legal Counsel of ones own choice during interrogation and the right to have the

relatives or friends informed of the arrest and detention and the reasons therefor. The Supreme Court has been deeply disturbed by the diabolical recurrence of police torture and lock up death resulting in scare in the minds of the common citizens, that their lives and liberty are under a new peril when the guardians of law gore-human rights to death, and checked the police brutality, and restored the credibility of the rule of law by sending the erring officials and authorities behind the bars, apart from ordering payment of compensation to the families of the victims. Human rights are honoured today more in breach than in observance. These cherished rights are violated with impunity, blowing the security of the person to winds with callousness. The mechanism of Legislature, executive and judiciary can enforce their rights effectively these human rights against the erring citizens bound by the law of the land. Violence and threat to these rights is from insurgents, terrorists and militants within and without the territory of our country.

"Human rights" face a daunting challenge from terrorists and militant insurgents.

Soli J. Sorabjee, while delivering Besant Lecture in 1992 bemoaned the Indian scene "The national scene is no less depressing. Violence seems to stalk the land of ahimsa. What has happened in Surat rape of women after they were dragged on to the streets and video recording of this by the rapists and their accomplices is the bottom line in depravity. Innocent young or old are killed mercilessly by militants supposed to be espousing a noble cause. A religious place is demolished in the name of religion and there is jubilation over the deplorable incident. The mafia rules in Bombay and rival gang members are killed in broad day light with impunity. I ask myself and I ask you what is the reason for this outburst of violence, which is becoming a pattern? As far as I can see there is more than one reason. In the first place respect for human life has disappeared. Human life is no longer considered precious,

human beings are measured in terms of mass and molecules, forgetting there is a spiritual spark inherent in every human being and the Divine resides within the heart of everyone Wrongdoing no more seems wrong”.

Freedom to discuss and profess is matter of ethical conviction.

John Start Mill writing on liberty of circulating moral or immoral doctrines such as the lawfulness of tyrannicide—, “by obtaining recognition of certain immunities, called political liberties which it was to be regarded as breach of duty in the ruler to infringe, and if he did infringe, specific resistance, or general rebellion was held to be justifiable”.

This doctrine applies with equal emphasis to the tyranny of indiscriminate killing and vandalism of destroying the property of Governments all in the name of an ideology and espousing a noble cause, by whom so ever it might be.

By liberty, was meant protection against the tyranny of the political leaders. Speaking on tyrannicide *Mill* says “I shall content myself with saying that the subject has been at all times one of the open question of morals. The act of private citizen is striking down a criminal, who by raising himself beyond the reach of legal punishment or control has been accounted by whole nations and some of the best and the wisest of men, not a crime, but an act of exalted virtue; and that right or wrong it is not of the nature of assassination but of civil war.

At times, this kind of innovative dilectics make us wonder whether fair is foul and foul is fair.

This reasoning is a double edged weapon. It cuts both ways.

Fair is foul and foul is fair. This is what exactly *Soli Sorabjee* meant when he moaned that wrong doing seems no more wrong.

Do terrorist have religion? Terrorists are enemies of all religions. Religion is a pretext and terrorism is a crime against humanity. *Jawaharlal Nehru* writing about *Ghazini Mohammed*—, made a brilliant analysis of the nature, character and motive of this invader. *Mohammed* was far more a warrior than a man of faith and like many other conquerors he used and exploited the name of the religion for his conquests. India was to him just a place from which he could carry off treasure and material to his home land. He enrolled an army in India, and placed it under one of his noted generals, *Tilak* by name, who was an Indian as a Hindu. This army he used against his own co-religionists in Central Asia”: (Discovery of India-5th reprint- September 1948-Page 1991-Md. of Ghazini and Afghans.).

Human Rights Act 1993 defines “human rights” as rights relating to life, liberty and equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by Courts in India.

International covenants, are declarations such as Geneva Convention dated 12-8-1949, proclamation of Tehran dated 13-5-1968 prevention and punishment of the crime of genocide and Bandung declaration including Panchaseel to which our country was a signatory. Geneva Convention has been incorporated in Geneva Convention Act 1960.

Our country is facing many challenges from upsurge of terrorist activities, intensification of cross border terrorism; insurgent groups and organized crime in several parts of the country, with the advantage of modern means of communication systems. The existing criminal justice system is not designed to deal with the terrorist and allied organisations, Prevention of Terrorism Act 2002 called by the acronym P.O.T.A., was enacted to meet the challenges for a period of three years. It is again on the anvil of the Lok Sabha today.

The meaning of terrorism has to be gathered from the Penal Section 3(1) of the Act. Doing any act or thing by using bombs, dynamite or other explosive inflammable substances or fire arms or other lethal weapons or poisons or obnoxious gases (whether biological or otherwise) of a hazardous nature or by any means whatsoever, with intent to threaten the unity, integrity, security or sovereignty of India or strike terror in the minds of the people or any section of people is terrorism and such act is terrorist act. Damaging any equipment of defence of India, or State Governments and their agencies interrupting essential supplies or services or injuring or killing any person is also terrorist act.

Terrorist organizations such as Communist Party of India (Marxist Leninist) peoples war, all its formations, and front organizations, Maoist Communist Centre (MCC), Jaish Md. Hiybul Muja-hideen, Al-Umar Mujahideen; Jammu and Kashmir, Islamic Front; United Liberation Front of Assam (ULFA), National Democratic Front of Bodoland (NDFB), Manipur Peoples Liberation Front (MPLF), All Tripura Tiger Force, National Liberation Front in Tripura in the north east and LTTE in Tamil Nadu, *inter alia* are declared as terrorist organizations.

War crimes were defined in the Charter of International Military Tribunal, Neuernburg of 8-8-1945, as per which eviction by armed attack or occupation and inhuman acts resulting from policies of the apartheid and genocide, or crimes against humanity, though they do not constitute violation of domestic law of any country.

Article 30 of the Declaration of Human Rights says in clear categorical terms that 'nothing in this declaration may be interpreted as implying for any State, group or persons any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein'.

Geneva Conventions Act, 1960 speaks of grave breaches of four conventions included

in the Schedule such as wilful killing torture, inhuman treatment including biological experiments, wilfully causing great suffering or serious injury to body and health and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully or wantonly-in the context of war criminal or captives.

Do terrorist come within this category? Do the Charters and Conventions prohibit the invocation of right of private defence by the army or para military forces on the border and the police force of the country within the context of internal rebellion, or insurgency such as nexalism or L.T.T.E. operations?

Nothing is an offence which is done in the exercise of right of private defence under The Indian Penal Code.

Private defence is a right to defend ones own body or property or that of any other person against offences like theft, robbery, mischief or criminal trespass and the said right extends to causing death of the assailant, if the assault by the assailant reasonably causes apprehension in the mind of the defender that death will be the consequence of such assault.

Upholding and protecting the sovereignty and integrity of India and to defend the country and render national service, when called upon to do so are the fundamental duties of every citizen as enshrined in Article 51-A of our Constitution. Army at the borders, and the police within the States are bound to discharge such fundamental duties, as citizens entrusted with such duties specifically.

Duty is not a tyrant, but a symbol of dignity to be discharged with affirmative joy.

The proclamation of Teharran dated 3-5-1968 at Para 10 placed on record that 'massive denials of Human Rights arising out of aggression or any armed conflict with their tragic consequences and resulting in untold human misery, endanger reactions which could engulf the world in ever growing hostilities'.

The reactions of demolition of Babri Masjid, the carnage of Dogra, in burning a train with passengers alive, provoked reactions in Bombay and Gujarat. The wounds are still raw in the memory of the nation.

In discharge of their fundamental duties, either in defending themselves or the body or property of the people and the State, if the army uses the gun against sudden massive onslaughts and foray of incursion by marauders across the borders, and in that act, if any body dies, including innocent people or children near and around or even destruction of their properties occurs, is it not military necessity under the conventions? Is it not in defence of the country and private defence of a regiment?

Terrorists have no national identity. Criminals from various countries are grafted by the terrorists outfits such as Al-Quaida or L.T.T.E. Almost all of them are non-nationals and mere mercenaries or free lancers. No country claims them, and no country owns them. Naxalite organisations are indigenous rebels of heterogeneous complexity who claim to have self sanctioned licence to kill and indulge in vandalism all in the name of upholding human rights or religion or a political ideology and they are above law of the land.

Long long ago Plautus, a Roman playwright of 3rd century B.C. noticed that "a man is a wolf rather than a man to another man".

Man may be a little lower than angels, but he has not yet shaken of the brute conflict is normal.

John Stuart Mill says—"To prevent the weaker members of the community from being preyed upon by innumerable vultures, it was needful that there should an animal of prey stronger than the rest commissioned to keep them down. But the king of vulture would be no less bent upon preying on the flock than any of the major harpies. It was indispensable to be in a perpetual attitude of defence against his beak and claw.

The aim therefore, of patriots was to set limits to the power which the ruler

should be suffered to exercise over community and this limitation was what they meant by liberty"

This squarely applies to the realm of the army and the police, as well.

The Gauhati High Court in a decision on Armed Forces (Special powers) Act observed that "a balance has to be struck between "Crushing of violence and crushing of liberty"

(*M.N. Chandan Devi v. Rishang Keishand* (1982) 1 G.L.R. 756 Para 7A)

This is the golden mean the State and the Governments have to strike and maintain and these checks are necessary to ensure balance—that is security of life, peace and harmony—in one word liberty-of the people.

Does this mean in any sense or from any point of view that these marauders are entitled to human rights propounded by the united nations in which they have no faith and against which the wage a relentless war and destroy properties of the nation-railways, telecommunications *etc.*, and liquidate human beings as enemies of people, driving savages to shame.

Declaration on The Human Rights of the Individuals who are not Nationals of the country in which they live 1985 adopted by the General Assembly on 13-12-1985 is very cautious in approach to aliens. Aliens are non Nationals of a country in which they live. They may be friends or foes. Aliens living in the country to the knowledge of and permitted by the Governments are entitled to all the rights accorded to the Nationals. This declaration shall not be interpreted as legitimizing the illegal entry into and presence in a State. This doesn't mean alien enemies are also entitled to such rights- Human Rights.

Human Rights are rights of the human in Man, but not non-human.

Violators complaining of violations is like the devil quoting scriptures.

Anatol France may sound cynical in saying that “to disarm the strong and arm the weak would be to change the social order, which is my job to preserve. Justice is the means by which established injustices or sanctioned”. But yet it is revealing.

Is it therefore fair to point an accusing finger against a defenders of the frontiers and the machinery of law and order within and put them in the dock for violation of human rights?

Is it not a distortion, a travesty and perversion of the concept of human rights?

This is the gray area in the realm of human rights into which the champions of human rights and The United Nations have to delve deep. It is time now.

Let us pause for a moment and ponder over this issue.

But hope springs in human breast.

To quote *Keats* in conclusion.

“Aye on the shores of darkness there is light and precipices show untodden green. There is budding morrow in midnight, there is a triple sight in blindness keen”.

Let this light in darkness and triple sight in blindness guide us.

Lead kindly light into that heaven of freedom, where the mind is without fear and the head is held high-into that budding morrow

Tomorrow.

AMBIGUITY OF PERCENTAGE OF RATE OF INTEREST ON AWARDS

By

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There seems to some confusion among most of us about the rate of interest *i.e.*, percentage of interest the MACTs are to award on Awards under M.V. Act. Now-a-days most of our good friends cite the latest decision *New India Assurance Company v. Chalie and another* reported in 2005 ACJ SC Page:1131, as an effective solution. So let me invite the readers attention to the Paragraph-21 of that judgment. Their Lordships have stated thus.

“Taking the totality of circumstances, on the basis of the various factors indicated above, the quantum of Compensation is fixed at Rs.3,50,000/-. The amount shall carry interest to 0.7.5% per annum from the date of filing the claim application upto the date of payment....”

This ruling of the Apex Court is not a direction to the Courts below that M.A.C.Ts. must and should award only 0.7.5% of

interest. On the other hand the language is unambiguous and clear as the words and vocabulary used is indicative of the circumstances on which the ruling of 0.7.5% of interest is based. The words “taking the totality of circumstances on the basis of various factors” indicate, that as per the circumstances of that particular case reported in 2005 ACJ SC Page 1131, the Apex Court thought that 0.7.5% is the reasonable interest. In other words the Honourable Supreme Court did not give any specific direction that the Lower Courts must and should award 0.7.5% in every case. Moreover Section 171 of the M.V. Act postulates:

“Where any Claims Tribunal allows a Claim for compensation made under the Act such Tribunal MAY direct that in addition to the amount of Compensation SIMPLE INTEREST SHALL also be paid at SUCH RATE and from such date not earlier than the date of making the claim as it may specify in this behalf”.