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Human Rights and Morality in Public Life

by
Prof. Balraj Chauhan**

Human Rights are those minimal rights which every individual must have against the State or other public authority by virtue of his being member of the human family irrespective of any other consideration.

Jose W. DioKono has rightly observed that human rights are more than legal concepts; they are the essence of men. They are what make men human ... Deny them and you deny men's humanity.

In seeking to answer the question whether there can be law without morality we are at once confronted with the problem of definition. Both law and morality are terms of many meanings.

If we define morality as some modern pragmatists tend to do, it include all manner of rules, standards, principles or norms by which men regulate, guide and control their relationships with themselves and with others, morality so defined necessarily includes the entire body of law.

Similarly, there are those who would define law as embracing all rules principles, standards or norms which men feel to be obligatory in their relationships with other men. A good deal of morality is necessarily embraced in such a definition.

It would seem clear that human conduct doesn't just happen. Each human act involves some sort of choice among alternative course of conduct found or believed within the capabilities of the individual actor, or at least between doing or refraining from doing the particular act. Whether made consciously or subconsciously, this choice reflects the will, or the reason, or both the reason and the will of the individual actor.

If the response is reasoned one, there is reference to something outside the mind of the subject, and the course of conduct is chosen on the basis of its conformity to what is considered right or on the basis of the extent to which it would contribute to some goal or purpose or good of the actor or perhaps on the basis of what the actor knows the community expects of him. Even if the choice is not reasoned one, there is reference outside immediate situation. The response or choice may be learned one, based upon similar experiences in the past in short a habit. Men die because they believe that thereby they contribute to some value greater than the individual



life or perhaps they feel obliged to sustain a tradition of brave or manly conduct. Men kill themselves because they come to believe that therein is toured the road to some trans-earthly reward, or bliss, or peace. Others die at their own hands because they have become confused or frightened at their inability to make choices of earthly conduct.

This aggregate of techniques, patterns, and standard of conduct to which men refer choosing courses of action may properly be called morals.

Law Ethics and Positive Morality

Ethics is a study of the supreme good in man and it is essentially concerned with the individual.

Law is concerned with social relationships of men rather than with individual excellence of his character. Ethics is very much concerned with the motives of individuals whereas law insists merely on the compliance of conduct with certain standards and only in exceptional cases concerns itself with motives of men. Ethics is the ideal towards which law strives. In marriage so long law persists there is little need of law to rule the relations of husband and wife but the solicitor comes in through the door as love flies out of the window. (Paton jurisprudence)

Man is free to accept or reject the obligation of ethics but legal duties are imposed on the individual by the State even against his consent.

Positive morality consists of rule of etiquette enforced by public opinion. The public opinion is an unorganised one without having the sanction of force behind it. Rule of law is imposed by the State and its sanction is the physical might of the State. There is a close relationship between the rules of law and positive morality, for the latter determines the upper and lower limit of the effective operation of law. If law lags behind popular standards it falls into disrepute, if the legal standards are too high, there are great difficulties of enforcement.

Therefore a legal system must exhibit some specific conformity with morality or justice, or must rest on a widely diffused conviction that there is a moral obligation to obey it. Again, though this proposition may, in some sense, be true, it does not follow from it that criteria for legal validity of particular law used in a legal system must include, tacitly if not explicitly reference to morality or justice.

In considering the simple truism which we set forth here, and there connection with law and morals, it is important to observe that there is a reason why law and morals should include specific content.

Man are not devices dominated by the wish to exterminate each other



and basic rules of law and moral though necessities must not be identified with the false view that men are predominantly selfish and have no interest in the survival and welfare of their fellows. But if men are not devils, neither are they angels; and the fact that they are a mean between these two extremes is something which makes a system of mutual forbearances both necessary and possible. With angels rules requiring for forbearances would not be necessary and with devils, prepared to destroy, reckless of the cost to themselves, they would be impossible.

Human Rights

For the first time the term Human Right was used in the US declaration of Independence in 1776 as, "we hold these truths to be self-evident, that all men are created equal, that they are endowed by creator certain inalienable rights, that amongst those are life, liberty and pursuit of happiness.

The French Declaration of Rights of Men and Citizen in 1789 States, "The aim of every political association is the preservation of natural and inalienable rights of men; these rights are liberty, property, security and resistance to oppression.

Marx considered the issue differently. For example for him a right to employment meant the employment should be available to the bearer of the right. It did not mean merely that nor man should be barred from taking employment by virtue of some irrelevant circumstances such as race or sex.

Subsequently human rights begin to have a different interpretation. They spread to rights of women, rights of racial minorities, homosexuals, right of self-determination,

etc.

Jeremy Bentham stated that, "Right is the child of law; from real law comes real rights, from laws of nature comes imaginary rights. For many philosophers the test of a right was "it is actually enjoyed" or it is actually enforced.

In the context of human society as it exists today human rights would differ from country to country. Human rights are also known as "Fundamental Rights", or "Basic Rights", or "National Rights", or "Common Rights" are the rights guaranteed to the people as individual, group or categories to live a decent and dignified life.

The first documentary use of the expression "Human Right" is to be found in the charter of United Nations which was adopted at San Francisco on 25-6-1945. The first concrete step by way of formulating various human rights was taken by the United Nations General Assembly in December, 1948 by adopting United Nations Declaration of Human Rights.



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United Nations Declaration of Human Rights merely operated as a statement of ideas which was not of the nature of legally binding covenant and had no machinery to enforce it. The deficiency was sought to be removed by United Nations General Assembly by adopting in December, 1966 two covenants for the observance of Human Rights:

- (a) The Covenant on Civil and Political Rights
- (b) The Covenant on Economic, Social and Cultural Rights

While the former formulated legally enforceable rights of the individual the latter was addressed to the State to implement them by legislation. These covenants are legally binding on the ratifying States.

As far as our country is concerned the term Human Rights has been defined in Protection of Human Rights Act 1993 in Section 2(d) as, "Human right means the right 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.

As far as our Constitution is concerned we have all right to be proud of such a good Constitution. Part III of the Constitution deals with the Fundamental Rights (Articles 2 to 35). These rights may be classified in to six categories:—

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| 1. Right to equality | Article 14-18 |
| 2. Right to freedom | Article 19-22 |
| 3. Right against exploitation | Article 23, 24 |
| 4. Right to freedom of religion | Article 25-28 |
| 5. Cultural and educational rights of minorities | Article 29-30 |
| 6. Right to constitutional remedies | Article 32-35 |

Whereas directive principles of State policy from Articles 36 to 51 underline the principles of good governance which the State to apply in making laws. The provisions contained in this part shall not be enforceable by any court.

Human Rights and Court: The Supreme Court, by a creative innovation, has overcome the objection by holding that for constitutional wrong or violation no sovereign immunity avails.

Another remarkable contribution is the interpretative inclination of the Judge to read United Nations instruments into national legislations thus strengthening human

rights.

The court has held that women could culpably be molested even without physical contact, thus liberalising the meaning of molestation.

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* This is an improved version of a special lecture delivered to Trainee Judicial Officers at IJTR, Lucknow

** Vice-Chancellor, Dr. Ram Manohar Lohiya National law University, Lucknow

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