HUMAN RIGHTS REGIME – AN INDIAN EXPERIENCE

Dr. Vandana Sharma
Bareilly College, Bareilly
India

Paper for the IPSA Conference Luxembourg, March 2010
Human Rights Regime – An Indian Experience

The term “Human Rights” is comparatively recent in origin but the ideas of human rights is as old as the history of civilization. Since the inception of early civilization, people were aware of these rights. India being the motherland of oldest civilization of the world and birth place of diverse cultures and religions has very rich heritage of human rights values. It is also one of the greatest and oldest companions of International community’s struggle for presentation protection and promotion of human rights.

The rights of man have been the concern of all civilization from time immemorial. The concept of right of man and other fundamental human rights were not unknown to the people of earlier periods. These rights of man had a place in almost all the ancient civilizations of the world, in the middle east, the babylanian laws, the Assyrian laws, and the little laws proceeded for the protection of the rights of man. In India, the Dharma of the Vedic period and in China the jurisprudence of Lao-Tze and Confucius protected rights. In the west, a number of rights, bearing some semblance to what we call civil and political rights today were available to a section of people. Cicero, the great Roman Jurist, tells us the Greek Stoics around 200-300 years B.C. developed on the basis of what we now consider as basic human rights an authentic natural law. Theory prescribing inviolable of these rights. Frankly speaking though the philosophy of human rights in India has come long way yet the progress though the historical path has always remained gradual and hence not lost its link with past.

Ancient Indian Culture as Human Culture

India is an ancient society but a modern State. The Indian ethos has largely been a tolerant society embracing and respecting the dignity of its friends and foes alike. Because Indian culture was more receptive in respecting the inherent worth of others, it had the tendency to overlook the so-called alien aspects and build a society based on the principles of cooperation rather than competition.

In recorded history and ancient scriptures there have been reference on the basic human Rights though they were not referred to by the name. The historical amount of ancient Bharat proves it beyond doubt that the Human Rights were as much visible in the ancient Hindu and Islamic Civilization as in the European Christian Civilization Ashoka and Akbar cannot be excluded from the genealogy of human rights what is apparent is that the ancient Indian were not indifferent or unaware of human Jurisprudence. The basis of ancient rights Jurisprudence was Dharma. The ideal of ancient legal theory was the establishment of socio-legal order free from traces of conflicts exploitation and miseries indeed, such a law of Dharma was a model for the universal legal order.

Human Rights in Vedic Period

To be true the root of concern for human rights in Vedic age may be traced in religion humanitarian traditions and the unceasing struggle for freedom and equality. In India the Dharma of the Vedic period provided for the protection of the rights of man. Hindus no less
than Greeks and Romans excelled in propounding philosophical ideals and constructing scientific concepts and methods which deeply influenced the law and life of people. In the words of Max Muller (six systems of Indian Philosophy)

“It is surely astounding that such a system’s the vedents should have been slowly elaborated by the indefatigable and intrepid thinkers of India thousands of years ago. A system that even now makes us feel giddy, as in mounting the last steps of swaying spire of an ancient Gothic Cathedral”.

The concept of Human Rights in India may be seen to have existed in crystallization of values that are the common heritage of mankind. References occur as in the Rig Veda to the civil Rights, that of tana (body) Skridhi (dwelling place) and Jibhasi (life). Long before Hobbes, the Indian scriptures tells us about the importance of freedom of the individual (civil liberties) in state. The concept of Dharma, the supreme law which governed the sovereign and the subjects alike covering the basic principles involved in the theory of rights, duties and freedoms.

In a way Indian culture has emphasized some of the fundamental principles of modern day philosophy of human rights from time past which may be evidenced in a declaration made in he Rig Veda:

No one is superior or inferior. All are brother. All should strive for the interest all and should progress collectively.

Mandala 5, Sukta 60, Mantra 5.

Akin to this is the concept of human rights associated with the worth and dignity of the individual, according highest respect to human personality without any discrimination on grounds of caste, religion, creed, race, colour, sex or place of birth. Undoubtedly, such a respect for inherent human attribute cultivated an atmosphere conducive to the development and nurturing of a society for all.

The ancient Indian social system was based on the principles of division of labour strictly relying on the aptitude and functional specialization of a person. This heavily corresponds to the Greek theory of Ideal State as portrayed by Plato in his work, The Republic. Plato has categorized society into three classes-Gold, Silver and Copper. Similarly, the Varna Vyavastha (caste system), initially based on innate nature (guna) and individual’s choice of work (shrama), was divided into four classes-Brahmin, Kshatriya, Vaishya and Shudra. However, the difference lies in the fact that Indian thinkers could translate their idea into practice whereas in Greek culture it remained only as a doctrine.

Human life was defined in terms of human dignity. And ultimate individual development depended solely upon the uplife and enrichment of humanity a whole. The Sutra (principles) of Athar Veda proclaim:
All should live together in harmony supporting one another like the spokes of a wheel for the chariot connecting its rim and the hub.

Sum Gyana Sukta, Athar Veda.

Based on the principle of equality the above doctrine highlights that as no spoke is superior to the other, no individual may claim to be, or be considered as superior to others. Individuals not only have the right to be treated with equality, but also a duty to strive for the happiness of every other individual. In a larger context, the term equality as explained in the hymn above extends even to equal claims over water, food and natural resources. No gainsaying that human dignity had universal appeal and Indian culture tried to be comprehensive to suit the needs of every human being.

A distinctive feature of Indian culture is its thorough understanding of nature, human values and dignity of man, his or her relation with other fellow beings in the universe and with the universe as a whole.

Under the Indian perspective, from time prehistoric, man has been the object in the study of mankind. Indian savants and sages emphatically expressed that entire mankind forms a single species. And despite outward diversities all have the common human dignity which supplies the link of unity in the midst of its diversity.

Kautiliya-the author of the celebrated political treatise."Arthashastra", not only affirmed and elaborated the civil and legal rights but also added a number of economic rights.

There is however witnessed a downfall of human rights jurisprudence in past vedic age. In the past vedic age, the rise of Buddhism and Jainism were certainly a reaction against the deterioration of moral order as against the rights of privileged class. A close scrutiny of Buddhist period reveals that people were equal in all fields of their life. Life was more liberal and human and repudiated caste distinctions. After Buddha Ashoka protected and secured the most precious human rights, particularly right to equally, fraternity, liberty and happiness.

**Human Rights in Islamic Era**

The concept of human rights got lost on its way in the dark and narrow alleys of the middle ages. In the medieval period the philosophical and ideal speculation were replaced by new ideal of chivalry, war and other heroic traditions which led to confusion and uncertainty with the invasion of India by Muslims created new situations where in the Muslim rulers or sultans followed a policy of discrimination against the Hindus. So the significance of Muslim rule in India was counterproductive to harmony, justice and equality. The operational ramifications of the Islamic norms can be gleaned from the mughal history of India. It was however at a later stage that Muslim state in India became considerably modified in its form. The trend initiated by Akbar came to be reversed by Aurangzeb though the Marathas and the Sikhs opposed and fought the fanaticism. The sheer indifference to human rights ultimately gave rise to Bhakti movement in India.
Just as there was acceptance for collective development of the individual there was concomitant toleration and understanding for religious freedom for people in general. This apprenticeship of the Indian mind taught that every individual had the freedom of expression and belief and could practice religion according to its tenets.

**Human Rights in British India**

The modern version of human rights jurisprudence may be said to have taken birth in India at the time of British rule. The origin of this ideal in India lies in the history of India especially in the struggle for freedom against British rulers. Some humanitarian ideas were honoured by the British government in the forms of abolition of slavery in 1811, abolition of sati in 1829, abolition of infanticide in 1875. But they exploited both the Indian masses and India economically, politically, culturally and spiritually. Political and civil liberties and rights of the Indian people were totally jeopardized. This destruction led the people to demand fundamental freedoms, civil and political rights. Thus meaning of right has been changed through time. This prolonged experience helped to the rights elaborately in the constitution of India.

Swami Vivekananda in his famous Chicago Address to the World’s Parliament of Religions in 1893 reiterated, *(We)* Indians believe not only in universal tolerance, but we accept all religions are true. I am proud to belong to a nation which has sheltered the persecuted and the refugees of all regions and all nations of the earth.

It may be recalled that from time immemorial Indian have called their culture by the name *manav dharma manav sanskriti* or human culture.

**Human Rights Journey in Independent India**

The span for India, as a sovereign, socialist, secular, democratic, republic is very significant one. India remains a country of stark contrasts. While over the period, despite linguistic, religious and regional diversities and abortive secessionist activities the concept of one nation has been strengthened from one Indian and of belonging to this country is much more pronounced today than it was fifty years ago. On the other hand, old caste and class conflicts and intraregional difference have been sharpened, creating a messy situation. Again hot and cold winds blowing from inside and outside the country, India, unlike most of the other Afro-Asian countries had adhered to a democratic system of government on the other hand. While we have maintained a semblance of a democratic system of government and rule of law. The practice of our legal and political system leaves much to be desired. We have illiteracy, malnourishment and environmental degradation and the general question of people living below the poverty line. It may be suffice to say here that few factors which cause erosion of human rights in this country are of disciple, non recognition of rights of others, administrative excesses human rights in the form of acts or statutes are meaning unless codes are implemented. Keeping this in mind Government of India enacted the protection of Human Rights Act 1993 for the constitution of National Human Rights Commission State.
Human Rights Commission in the state and Human Rights courts for the better protection of human rights and for the matters connected herewith or incidental thereof.

**Indian Human Right Regime**

India remains a country of stark contrasts while over the period, despite linguistic religious and regional diversities. With its constitutional guarantees, impartial judiciary, a free and vibrant media, and a well-established NGO Community, India has been able to successfully establish the concept of one nation and unity in a multi-ethnic multi-religious, multi-lingual and multi-cultural society. On the other hand, old caste and clan conflicts and intraregional differences have been sharpened creating a messy situation again despite hot and cold outside the country. India, unlike most of the other Afro-Asian Countries, has adhered to a democratic system of government and rule of law. From Indian experience of journey of Human Rights—We can draw some unique features for other Human Rights Regime of the world.

1. **Faith, Secularism and Democracy**

Western variants of multi-culturalism and secularism are being challenged by religious demands for public recognition of faith. Instead of reinventing the wheel, the world can take some lesson from India.

Since 1950, when India’s lengthy constitution was adopted, the country’s official, constitutional discourse has attended to the range of issues and arguments generated by a multiply diverse society. They include the cultural rights of minorities; the funding of minority educational institutions; the cultural rights of indigenous peoples; linguistic rights; the self-government rights of culturally distinct groups; asymmetrical federalism; legal pluralism; affirmative action for marginalized groups.

Moreover, several concerns have long been part of official state policy: public holidays that bestow official recognition to minority religions; flexible dress codes; a sensitivity in history- and literature-teaching to the cultures and traditions of minorities; and government funding of especially significant religious practices.

But perhaps the most important lesson India has for debate over and policies towards “multiculturalism” is the need to rethink and reform another “ism”- secularism. This term, originally non-Indian, is now part of the everyday vocabulary of Indian politics and society in a way that others could embrace.

The introduction of secularism into a discussion of multiculturalism should be no surprise. Secularism defines itself in relation to religion; and always, everywhere, even when they are understood to be conceptually separate, cultures and religions remain deeply intertwined. This is even more so in cases where the very distinction between religion and culture is hard to draw. India does not erect a wall of separation between state and religion. There are boundaries, of course, but they are porous. This allows the state to intervene in religions, to
help or hinder them. This involves multiple roles: granting aid to educational institutions of religious communities on a non-preferential basis; or interfering in socio-religious institutions that deny dignity and status to members of their own religion or to those of others.

This model shows that we do not have to choose between active hostility or passive indifference, or between disrespectful hostility or respectful indifference. We can have the necessary hostility as long as there is also active respect: state may intervene to inhibit some practices, so long as it shows respect for the religious community and it does so by publicly lending support to it in some other way.

2. **Non Military Approach to Terrorism**

India adopts a comprehensive approach to terrorism, which makes a clear distinction between domestic and international terrorism and between indigenous and foreign terrorists and believes that counter-terrorism can be effective only if there is a multi-pronged approach based on a national consensus.

2. It also believes that a healthy, well-functioning democracy, good governance, a secular and liberal mind-set, which makes no distinction between the majority and the minority and treats both as equal in the eyes of the law and the political leadership, an administration, which has attentive eyes and ears for the grievances and feelings of the people and the required sensitivity to redress the reasonable grievances instead of letting them fester and a determination to deal firmly with those who take to terrorism, when their unreasonable grievances are not accepted, are essential pre-requisites for a successful counter-terrorism policy.

3. Nearly 40,000 innocent civilians have been killed by terrorists in India. The first act of mass casualty terrorism on the ground (not on an aircraft) targeting economic nerve centres and innocent civilians took place in Mumbai in March, 1993, resulting in the death of 250 civilians. An average of 950 foreign terrorists, the majority of them Pakistani nationals, are killed by the Indian security forces every year since 1999. There have been 46 acts of suicide terrorism or fedayeen attacks since 1999, 44 of them carried out by Pakistani nationals.

4. Despite the large civilian casualties and the indiscriminate use by the terrorists of weapons of various kinds such as hand-held rifles, rocket launchers, sophisticated to be countered through a mix of the political, administrative and operational approaches, with the police as the main instrument and the Army only as the instrument of the last resort.

India's avoidance of a military approach to terrorism is based on the following principles:

An Army is meant to be used against an external Army of an adversarial State and not against non-State insurgent and terrorist groups, except in exceptional circumstances where the police and the para-military forces are not able to deal with them.

Where the use of the Army is considered unavoidable, it should be confined to infantry elements using light and medium-powered weapons and there should be no use of the Air
Force and no use of weapons which could cause large casualties unacceptable under humanitarian laws.

Barring such exceptions, the Police should have the leadership role in counter-terrorism. It should be responsible for its prevention, detection, investigation and prosecution.

Ensuring that the terrorists are not able to disrupt the democratic process. Terrorist violence has not been allowed to come in the way of elections in India's North-East, Punjab and J&K. India's independent Election Commission has this year been in receipt of the Magsaysay Award.

Building a national consensus through constant interactions between the ruling coalition and the opposition, between the central and the state leaderships and between governmental and non-governmental bodies dealing with terrorism.

Counter-terrorism managers should have a tremendous patience. There are no quick-solutions to terrorism. It took India 19 years to bring the insurgency-cum-terrorism in Nagaland under control, 20 years to restore normalcy in Mizoram and 14 years to put an end to terrorism in Punjab. Firmness and determination in action tempered by a civilized, democratic and patient behaviour by the State have been the hallmark of India's counter-terrorism policy.

3. **Balancing Approach Between Human Rights and Social Control**

From Indian experience of journey of Human rights we can say that there is a need for balancing approach between Human Rights and social control. It is obvious that, if individuals are allowed to have absolute freedom of speech and action the result be chaos, ruin and an anarchy. On the other hand, if the state has absolute power to determine the extent of personal liberty the result would be tyranny. It is worth mentioning here that the Indian Constitution make attempt to make a balancing approach between human rights and social control by enunciated fundamental rights and by setting limits within which they can be curtailed.

The Constitution of India permits reasonable restrictions to be imposed on people’s rights in the interest of society to determine the extent of restrictions to be imposed on the Human Rights. Therefore restrain’s imposed upon the person in the enjoyment of their rights should be mollified, arbitrary or of an executive nature any law which arbitrarily infringes the Human Rights can be called against the concept of reasonableness and unless it makes a proper balancing approach between the human rights guaranteed under the constitution and social control as envisaged by the framers of the constitution. It will be in consonance with the concept of human rights. Hence must be objective and in general interest of the society.
4. **Constitutional Guarantees**

The constitution of India is one of the most rights based constitutions in the world. Drafted around the same time as the universal declaration of the Human Rights (1948). The Indian Constitution captures the essence of Human Rights in the preamble and the section of fundamental rights and the directive principle of the state policy.

The government of India has established five special commissions and these commissions look into specific complaints of the violations of human rights and make recommendations or awards. Compensation to the victims the institution are:

- The National Human Rights Commission (established in 1993)
- Nation Commission for Minorities (created in 1978)
- The National Commission for scheduled caste (SC) and Scheduled Tribes (ST) (created as a constitutional body in 1990)
- The National Commission for Women (created in January 1992)
- The National Commission for Backward classes (created in 1992)

**Provision of the Fundamental Rights and Directive Principles:**

Fostering respect for international law is an obligation of the state under Article 51 of the constitution. The Human Rights relevant to the administration of criminal justice derive sustenance from the creative interpretations of the Supreme Court Article 19 guarantees to all citizens freedom i.e. Article 20 protects every individual against ex post facto (retrospective) criminal law, double jeopardy and testimonial compulsion. Article 15 and 16 amplify declaring that no citizen is discriminated on the ground of religion, race, caste, sex, birth place. Article 17 directs towards the abolition of untouchability. Article 18 towards the abolition of titles. Article 23 and 24 are rights against exportation. Article 25 to 28 are rights to freedom of religion.

5. **People – Centred Advocacy**

There are four specific trajectories of the human rights discourse in the Indian Context – Civil and political Rights, Rights of the marginalized (such as women, dalits and adivasis), economic, social and cultural rights and Rights to transparent and accountable Governance. Through each of the trajectories is interconnected, they were promoted by different sets of actors at different points in time. There has always been tension and lack of mutual appreciation between those who promoted civil liberties and the left-oriented groups who worked towards the structural transformation of socio economic condition and consequently of the state.

If human rights are to have real meaning they must linked to public participation must be preceded by empowerment to the people. A sense of empowerment requires a sense of
dignity, self-worth and the ability to ask questions. A process of political empowerment citizens to participate in the public sphere.

People-centered advocacy is a possible link between rights and participation. People-centered advocacy seeks to connect social development, human rights, and governance. It is about creating enabling conditions for socio-political empowerment and enhancing the capability of marginalized to advocate for themselves so that they can claim their rights, seek public accountability, and participate in the process of governance.

People-centered advocacy can be an effective way to link rights and participation. However, the challenge is how to transform this linkage to emancipatory politics that would help the poor emerge from the structural inequalities that perpetuate poverty.

6. **Public-Interest Litigation**

In the Judicial Activation has taken a new form. Public Interest Litigation are strong weapons for social justice and Human rights presentations. Despite constitutional guarantees public-interest litigations became the basic tool for legal justice. Any person can file a complaint for the protection of rights whether his/her rights are society who rule India, the dalit, adivasi, muslim or the poor in general who constitute over 75% of the Indian population. 2.5 million children under this unique feature is a strong weapon.

This is one of the measures employed for the legal protection of human rights. PILs are suits that are filed in pursuit of the public interest. Such suits may be filed by a public-spirited individual or group of individuals or by a civil society organisation whose mission covers the issue in relation to which action is filed. In the quest for the effective environment stewardship, public interest environment litigation has proved a major tool in the hands of concerned individuals and groups worldwide. It is clear that successful public interest litigation requires a motivated and capable citizenry with sufficient interest and commitment to issues at stake, a legal framework with rules that facilitates this kind of litigation as means of enforcing the rights of citizens, a judiciary that is sympathetic both to this method and the issues pursued thereby and a policy framework that will respond positively to the dictates arising from such actions.

For the legal profession and the judiciary to rise to the challenge of public interest litigation in the advancement of human rights, it is necessary that capacity be built within the profession for public interest litigation generally, and for human rights litigation in particular.

We need to move beyond assessing formal independence to empirically determining the level of actual judicial independence experienced by a state, a task rather more daunting than identifying specific legal language in a document to identify formal judicial independence.
Of course as human rights groups continue to point out the Indian state – run by elected representative has a duty to uphold the Indian Law, which is why it is criticised for any violation it commits on the other hand militant or terrorist groups are non-state actors who do not believe in the Indian constitution and as participants in an insurgency they should be judged in the lights of principles of war like those enshrined in the Geneva Convention. The Lesson is clear the victims of human rights abuses in the one context – may not necessary be defenders of human rights in another – those who preach human rights are for humans only. The standard of human rights should also be seen like the ethics of the medical profession just as no ethical doctor can refuse to treat a patient because of his own or his patients personal political beliefs so is the civil or human rights activists duty bound to oppose all human rights violations irrespective of who its victims are or who commits them.

References

2. S.Guha(2003). Human and Civil Rights : Perspective and Practice with Special Reference to India.
3. Cranston,Maurice.(1962).What are Human Rights?
11. http://www.opendemocracy.net/arts-multicultural/articles_2204.jsp -Rajeev Bhargava’s open democracy essays analyse and explain India in the world and India to itself.