

Human Rights in Constitutional Context

by

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Life is a glorious perfection of nature, a masterpiece of creation. It is majestic and sublime. Human being is the epitome of the infinite prowess of the divine designer. Great achievements and accomplishments in life are possible if one is permitted to lead a life that is respected by others. It has been said “life is action, the use of one’s powers” and one can use powers if he has real faith in life. The term “life” as employed under Article 21 of the Constitution of India does never mean a basic animal existence but conveys living of life with utmost nobleness and human dignity—dignity which is an ideal worth fighting for and worth dying for.

Dignity of life takes within its fold some of the finer aspects of human civilisation. Reverence for human rights is a fundamental principle of morality and denial of the same is not only humiliation to humanity but also expression of antagonism to the concept of creative intelligence.

Human rights in their basic denotation and conceptual connotation are fundamental, universal and inalienable. They refer to those justifiable rights and conditions of life, fulfilment of which enables a human being to realise his/her worth and helps to lead a life of dignity and honour, inherent to all human beings, irrespective of nationality, place of residence, sex, ethnic origin, colour, religion, language or status. These rights are natural, indivisible and form the cornerstone of morality, legal rights,

civilisation and democratic body polity. They create space for life and living and foster respect of oneself and for others. When these rights are concretised, they create a society where diversity and differences amongst people are not only accepted but also mutually respected.

The conception of human rights includes the weak, meek, the underprivileged and the vulnerable. It gives emphasis on social, economic, political and psychological development of every member of the society. When it is called universal, it assumes the status of Everestine pillar of international human rights law. One is compelled to sit in the time machine and look at the Universal Declaration of Human Rights, 1948 which enumerates numerous

human rights giving stress on equality, non-discrimination and dignity.

It is apt to note that our compassionate, organic and rights-based Constitution was drafted at the same time as the Universal Declaration of Human Rights. The words used in the Preamble of our Constitution capture and epitomise the human rights in their conceptual quintessentiality. The basic concept gets further accentuated in the fundamental rights and directive principles of State policy. The human rights inhered in the constitutional provisions and the Protection of Human Rights Act, 1993, with the passage of time, have gained immense signification and the judiciary has invented new tools to balance and secure the human rights in many a sphere. The result is the expansion of the rights

both jurisprudentially and practically to attain the constitutional vision of justice as conceived of by our Founding Fathers. They have pyramided such rights as every human being everywhere at all times is entitled to have.

Our Constitution is the greatest document on human rights in many a form. In *Kesavananda Bharati*¹ it has been stated that Parts III and IV of the Constitution essentially form the basic element of the Constitution without which its identity will completely change. A number of provisions in Parts III and IV are fashioned on the UN Declaration of Human Rights. It has been observed that rights mainly proceed on the basis of human rights. Emphasis has been laid that whether one calls them “natural” or gives some other name, basically they are to secure the requisite

¹ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.

human rights i.e. liberty and equality and to secure justice, political, social and economic as mentioned in the Preamble because these rights are inherent in the genus of human rights.

Emphasising on the integrated scheme and the grand amalgam of the fundamental rights and the directive principles of State policy and what our Constitution visualises, the Court in *Maneka Gandhi*² stated that there can never be a divorce between the natural law and the constitutional law, as such a divorce would be disastrous because that would corrode the inherent or natural human rights of an individual recognised by and embodied in our Constitution.

² *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

In *Minerva Mills Ltd.*³ it has been lucidly stated that the relationship between the civil and economic rights is one of interdependence. The Court, by stating the concept of principle of interdependence, has established the holistic and integrated nature of all human rights and the human rights have been placed at the centre of Indian polity to be used as an instrument to achieve social justice. Needless to emphasise, social justice deals with all aspects of human life. Harold J. Laski remarked, “The more equal are the social rights of citizens, the more likely they are to be able to utilise their freedom in realms worthy of exploration.” The purpose of social justice is to maintain or to restore equilibrium in the society and it envisages equal treatment of equal persons in equal or essentially equal circumstances. Social solidarity is brought by

³ *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625.

enforcing the concept of social justice, and that is achieved by galvanising human rights.

Human rights as a conceptual eventuality has taken high pedestal in many a jurisprudence. Prior to dwelling upon the same, reference may profitably be made to our ancient texts which have also been referred to in *Kapila Hingorani*⁴ where the Court reproduced from the book *Human Rights and Indian Values* by Justice M. Rama Jois:

*48. ... Samani prapa saha vonnbhaga
samane yoktray saha wo yunism
arah nabhimiv abhite:*

⁴ *Kapila Hingorani (1) v. State of Bihar*, (2003) 6 SCC 1.

All have equal rights in articles of food and water. The yoke of the chariot of life is placed equally on the shoulders of all. All should live together with harmony supporting one another like the spokes of a wheel of the chariot connecting its rim and the hub. (Atharvaveda-Samjnana Sukta)⁵

The Court observed that the right to equality of all human beings has been declared in the Vedas and are regarded as inviolable. In order to emphasise the dignity of the individual, it was said that all are brothers as all are the children of God. No one is inferior or superior. It is of utmost importance to note that right to equality was made a part of “dharma” long before the State came to be established.

⁵ *Ibid.*, 24, para 48.

In the said case, after referring to Articles 1 and 7 of the Universal Declaration of Human Rights, 1948, it has been opined that the said Declaration is similar to the declaration of equality made in the Rigveda. It has been observed that after the establishment of the State, the obligation to protect the right to equality was cast on the rulers and it was made a part of the “Rajadharma” i.e. the constitutional law. The following verse was usefully reproduced:

*48. ... Yatha swarin bhutani dhara dharyate samam
tatha swarin bhutani bibharte parthivm vartam*

Just as the mother earth gives equal support to all the living beings, a king should give support to all without any discrimination (Manu IX 31).

This also meant that the kings were required to afford equal treatment to all the citizens in the same manner in which a mother treats all her children.⁶

Coming to the expanse of human rights jurisprudence it is perceivable that it has expanded the sphere of Article 21 of the Constitution both horizontally and vertically. In *Francis Coralie*⁷ the Court held that the right to life includes the right to live with human dignity and all that goes along with it, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving, mixing and co-mingling with fellow human beings.

⁶ *Ibid.*, 25, para 48.

⁷ *Francis Coralie Mullin v. UT of Delhi*, (1981) 1 SCC 608 : 1981 SCC (Cri) 212.

In number of cases starting with Rural Litigation and Entitlement Kendra⁸, the Court has held that the right to life includes the right to clean environment. In Vellore Citizens' Welfare Forum⁹, the Court recognised the precautionary principle in the Indian environmental law. In M.I. Builders (P) Ltd.¹⁰, the Court applied the "public trust" doctrine to protect and preserve public land and related it to sustainable development, precautionary principle, environmental impact assessment and biodiversity protection.

With the passage of time, right to health was recognised as an integral part of the right to life. In Consumer Education and

⁸ *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1987 Supp SCC 487.

⁹ *Vellore Citizens' Welfare Forum v. Union of India*, (1996) 5 SCC 647.

¹⁰ (1999) 6 SCC 464.

Research Centre¹¹, the Court was concerned with the occupational health hazards faced by workers of the asbestos industry. Noticing that long years of exposure to harmful substances like asbestos could result in debilitating asbestosis, the Court mandated the provision of compulsory health insurance for every worker as enforcement of the worker's fundamental right to health. In Murli S. Deora¹² the Court prohibited smoking in public places in the entire country on the ground that smoking is injurious to the health of passive smokers and issued directions to the Government to take effective steps to prohibit smoking in public places. In Parmanand Katara¹³, the Court was confronted with the situation where hospitals were refusing to admit accident victims and were

11 *Consumer Education & Research Centre v. Union of India*, (1995) 3 SCC 42 : 1995 SCC (L&S) 604.

12 *Murli S. Deora v. Union of India*, (2001) 8 SCC 765.

13 *Parmanand Katara v. Union of India*, (1989) 4 SCC 286 : 1989 SCC (Cri) 721.

directing them to specific hospital designed to admit “medico-legal cases”. The Court held that this violated the right to life as the right would be rendered illusory if a citizen could be refused *emergency medical treatment* on account of an administrative arrangement between hospitals.

Right to shelter has become a facet of human right. In *Gauri Shanker*¹⁴, *the right to shelter* was recognised as a fundamental right under Articles 19(1)(e) and 21 and in *Chameli Singh*¹⁵ it was observed that:

5. ... The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal it is the bare protection of the body [while] for a human being it has to be a suitable accommodation which would allow

¹⁴ *Gauri Shanker v. Union of India*, (1994) 6 SCC 349.

¹⁵ *Chameli Singh v. State of U.P.*, (1996) 2 SCC 549.

him to grow in every aspect—physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home.¹⁶

Thereafter the Court ruled thus:

8. In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society.¹⁷

(emphasis supplied)

¹⁶ *Ibid.*, 554, para 5.

¹⁷ *Ibid.*, 555, para 8.

It further proceeded to observe:

8. ... Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. As is enjoined in the directive principles, the State should be deemed to be under an obligation to secure it for its citizens, of course subject to its economic budgeting. In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip oneself to improve his excellence as a useful citizen as enjoined in the fundamental duties and to be a useful citizen and equal participant in democracy.¹⁸

Right to speedy trial, insegregable facet of Article 21, has been recognised as an inalienable compartment of human rights. The concept of speedy trial engulfs fair delineation as well as

¹⁸ *Ibid.*, 555-56, para 8.

expeditious procedure. In the name of speedy trial the fairness in trial cannot be allowed to take the back seat. It has its own importance. The very purpose of speedy trial is to see that life and liberty of a person is not taken away without following reasonable, fair and just procedure and the cumulative effect of the same is that there has to be a coherent analysis between the fairness of procedure and the conception of speedy trial.

In *J. Jayalithaa v. State of Karnataka*, (2014) 2 SCC 401 it has been held that denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must

be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. **Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also.** Therefore, any hindrance in a fair trial could be violative of Article 14 of the Constitution.

The facet of Article 21 has been sharpened by judicial creativity of the Supreme Court. One is tempted to quote a few lines from *Sher Singh v. State of Punjab*¹⁹:-

“The horizons of Article 21 are ever widening and the final word on its conspectus shall never have been said. So long as life lasts, so long shall it be the duty and

¹⁹ (1983) 2 SCC 344

endeavour of this Court to give to the provisions of our Constitution a meaning which will prevent human suffering and degradation.”

The factum of inordinate delay has not been appreciated by the court and, in fact, as has been stated above it has been made applicable to the interregnum period between the imposition of death sentence and its execution. In *Smt. Triveniben v. State of Gujarat*²⁰ in his concurring opinion Jagannath Shetty, J., referring to the decision in *Sunil Batra*²¹, opined that nobody could succeed to give peace of mind to a condemned person despite being provided with all amenities of prison. In that context, the learned Judge observed thus: -

“चिंता चिंता द्वायूर्मध्या

²⁰ (1989) 1 SCC 678

²¹ (1978) 4 SCC 494

Chita Chinta Dwayoormadhya,

चिंता तत्र गरीयसी

Chinta Tatra Gariyasi,

चिता दहति निर्जीवं

Chita Dahati Nirjivam,

चिंता दहति सजीवकम

Chinta Dahati Sajeevakam.

As between funeral fire and mental worry, it is the latter which is more devastating, for, funeral fire burns only the dead body while the mental worry burns the living one. This mental torment may become acute when the judicial verdict is finally set against the accused. Earlier to it, there is every reason for him to hope for acquittal. That hope is extinguished after the final verdict. If, therefore, there is inordinate delay in execution, the condemned prisoner is entitled to come to the court

requesting to examine whether it is just and fair to allow the sentence of death to be executed.”

While talking about speedy trial, it has to be borne in mind that it cannot be regarded as exclusive right of the accused. The right of a victim has to be given due recognition. As has been stated in *Mangal Singh*²² it is a mistake to assume that delay in trial does not affect the victim. In fact, in certain cases, the victim may suffer more than the accused. The said principle has been reiterated in *Rattiram*²³ observing that the courts are to remain sensitive to the collective cry and the right of the victim that springs from the crime he or she has suffered. Needless to say that there has to be a fair trial but it is also undesirable that every adjective facet of law has to be given the status of perfection.

22 (2009) 17 SCC 303 : (2011) 1 SCC (Cri) 1019.

23 *Rattiram v. State of M.P.*, (2012) 4 SCC 516 : (2012) 2 SCC (Cri) 481.

The concept of liberty has been treated as a human right apart from being a constitutional right. It is to be borne in mind that no one would like to barter it for all the tea in China or for all the pearls of the sea. Liberty has inseparable nexus with every ligament of heart. It is an electric light. Not for nothing a great English poet has said, “Where liberty dwells, there is my country”²⁴. Liberty, subject to valid restrictions in law, is a paramount human right.

In *Mehmood Nayyar Azam*²⁵ the Court, addressing the factum of mental torture in the case of a person in custody, observed that:

²⁴ H.L. Mencken, *A New Dictionary of Quotations* (Alfred A. Knopf Inc., New York 1942) 682.

²⁵ *Mehmood Nayyar Azam v. State of Chhattisgarh*, (2012) 8 SCC 1 : (2012) 4 SCC (Civ) 34 : (2012) 3 SCC (Cri) 733 : (2012) 2 SCC (L&S) 449.

27. ... inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted [to cause] humiliation and compels a person to act against his will or conscience.²⁶

It has been further observed therein that torture is not merely physical but may even consist of mental and psychological torture calculated to create fear to submit to the demands of the police. Right to reputation is a facet of the right to life of a citizen under Article 21 of the Constitution. Any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of the law protects the dignity of a citizen in a society governed by

²⁶ *Ibid.*, 14, para 27.

law. A citizen while in custody is not denuded of his fundamental rights under Article 21 of the Constitution. The restrictions imposed must have the sanction of law by which his enjoyment of fundamental rights are curtailed but his basic human rights are not crippled. The police officers cannot treat him in an inhuman manner. On the contrary, they are under an obligation to protect his human rights and prevent all forms of atrocities. A convict of a crime while in prison is not reduced from being a person to a non-person. Any form of torture or cruelty or ill-treatment falls within the inhibition not only under Article 21 but also violates the human rights. In fact, the Court has granted compensation where custodial death or custodial torture has been proven by taking recourse to public law remedy.

Now coming to property and human rights, reference may be made to the recent observations of the Court in *Tukaram Kana Joshi*²⁷ wherein it has been opined that the right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though it is not a basic feature of the Constitution or a fundamental right, yet human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now, however, human rights are gaining an even greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension. In the said case, distinction was made between a subject of medieval India and a

²⁷ *Tukaram Kana Joshi v. MIDC*, (2013) 1 SCC 353.

citizen under our Constitution. Prior to that in *Mukesh Kumar*²⁸, the Court observed that the right to property is now considered to be not only a constitutional or statutory right but also a human right and regard being had to expanded dimension right to property is also considered very much a part of the new dimension. In *Darius Shapur Chenai*²⁹ it has been ruled that right to property is a human right as also a constitutional right, the same cannot be taken away except in accordance with law. Article 300-A of the Constitution protects such right.

Presently, to the gender equality in the context of human rights. The Court has, in many a pronouncement, laid emphasis on sensitivity. Sensitivity governs the future, in a way. It may be

28 *State of Haryana v. Mukesh Kumar*, (2011) 10 SCC 404 : (2013) 3 SCC (Civ) 769.

29 *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai*, (2005) 7 SCC 627.

added without any hesitation that next to the Almighty we are indebted to a woman for life itself and the values worth living for. When a man degrades a woman, he falls into more degradation.

In *Valsamma Paul*³⁰, it has been ruled that human rights for women comprehends gender equality and it is also traceable to the Convention for Elimination of All Forms of Discrimination Against Women. Human rights for women, including girl child are inalienable, integral and an indivisible part of universal human rights. The full development of personality, fundamental freedoms and equal participation by women in political, social, economic and cultural life are held to be concomitants for national development, social and family stability and growth—cultural,

30 *Valsamma Paul v. Cochin University*, (1996) 3 SCC 545 : 1996 SCC (L&S) 772.

social and economical. All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights.

Gender justice is absolutely and inseparably linked with human rights. Lord Denning in his book *Due Process of Law* had observed that a woman feels as keenly, thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom—develop her personality to the full—as a man. When she marries, she does not become the husband's servant but his equal partner. If his work is more important in life of the community, her's is more important in the life of the family. Neither can do without the other. Neither is above the other or under the other. They are equals.

The World Conference on Human Rights, 1993 at Vienna condemned gender-based violence and all categories of sexual harassment and exploitation. A part of the Resolution reads thus:

“The human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community.... The World Conference on Human Rights urges governments, institution, intergovernmental and non-governmental organisations to intensify their efforts for the protection of human rights of women and the girl child.”

In *Vishaka v. State of Rajasthan*³¹ the Court invoked the text of the Convention for the Elimination of All Forms of Discrimination against Women and framed guidelines for establishment for redressal mechanisms to tackle sexual harassment of women at workplace and laid down the guidelines.

Recently, in *S. Samuthiram*³² the Court observed that every citizen in this country has right to live with dignity and honour which is a fundamental right guaranteed under Article 21 of the Constitution of India. Sexual harassment like eve-teasing of women amounts to violation of rights guaranteed under Articles 14 and 15 as well. Eve-teasing today has become pernicious, horrid and disgusting practice. Consequences of not curbing such a

31 (1997) 6 SCC 241 : 1997 SCC (Cri) 932.

32 *Inspector General of Police v. S. Sanuthiram*, (2013) 1 SCC 598.

menace are at times disastrous. There are many instances where girls of young age are being harassed, which sometimes may lead to serious psychological problems and even committing suicide. The necessity of a proper legislation to curb eve-teasing is of extreme importance. Thereafter, taking note of the absence of effective uniform law, certain directions were issued to curtail the menace.

Conferment of equal status on women apart from being a constitutional right has been recognised as a human right. In *Bodhisattwa Gautam*³³, the Court, accentuating the concept, proceeded to state thus:

“9. ... Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and

³³ *Bodhisattwa Gautam v. Subhra Chakraborty*, (1996) 1 SCC 490 : 1996 SCC (Cri) 133.

peaceful life. Women, in them, have many personalities combined. They are mother, daughter, sister and wife and not playthings for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.³⁴

In *State of Punjab v. Ramdev Singh*³⁵, while emphasising that the Court should deal with cases of sexual offences sternly and severely, it has been observed that sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It has been further held that rape

³⁴ *Ibid.*, p. 500, paras 9-10.

³⁵ (2004) 1 SCC 421 : 2004 SCC (Cri) 307.

is a crime against basic human rights. Recently, in *Jugendra Singh*³⁶ the Court, while commenting on rape and its consequences, observed thus:

“49. Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one’s physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu. The cry of the collective has to

³⁶ *Jugendra Singh v. State of U.P.*, (2012) 6 SCC 297 : (2012) 3 SCC (Cri) 129.

be answered and respected and that is what exactly the High Court has done by converting the decision of acquittal to that of conviction and imposed the sentence as per law.”³⁷

While dealing with violation of Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition on Sex-Selection) Act, 1994, apart from giving series of directions, emphasis was also made on practice of female foeticide in *Voluntary Health Association of Punjab v. Union of India and others*³⁸. In the said case it has been said that Female foeticide has its roots in the social thinking which is fundamentally based on certain erroneous notions, ego-centric traditions, pervert perception of societal norms, and obsession with ideas which are totally individualistic sans the collective good. All involved in female foeticide

³⁷ *Ibid.*, 311, para 49.

³⁸ 2013 (3) SCALE 195

deliberately forget to realize that when the foetus of a girl child is destroyed, a woman of future is crucified. To put it differently, the present generation invites the sufferings on its own and also sows the seeds of suffering for the future generation, as in the ultimate eventuate, the sex ratio gets affected and leads to manifold social problems. I may hasten to add that no awareness campaign can ever be complete unless there is real focus on the prowess of women and the need for women empowerment.

Further discussing about the repercussion of female foeticide it has been opined that every woman who mothers the child must remember that she is killing her own child despite being a mother. That is what abortion would mean in social terms. Abortion of a female child in its conceptual eventuality leads to killing of a

woman. Law prohibits it; scriptures forbid it; philosophy condemns it; ethics deprecate it, morality decries it and social science abhors it.

Reference was made to the scriptural comments and postulates. The Court referred to three Shlokas that have been referred in *State of H.P. v. Nikku Ram and others*³⁹, wherein the judgment commenced with the line “यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः” [“*Yatra naryastu pujanya ramante tatra dewatah*”] (where woman is worshipped, there is abode of God). The second line being significant was reproduced. It is as follows: -

“यत्र तास्तु न पूज्यन्ते सर्वास्तत्राफलाः क्रियाः”

³⁹ (1995) 6 SCC 219

[*Yatra tāstu na pūjyante sarvāstatraphalāh kriyāh*]

A free translation of the aforesaid is reproduced below:-

“All the actions become unproductive in a place, where they are not treated with proper respect and dignity.”

Two other references that were given are stated below: -

“भृतृभातृपितृजातिश्वश्रूश्वशुरदेवरैः ।

बन्धुबिश्च स्त्रियः पूज्याः भूषणाच्छादनाशनैः ॥”

[Bhārtr bhratr pitrijnāti
śwaśrūśwaśuradevaraih| Bandhubhiśca striyah
pūjyāh bhusnachhādanāśnaih||].

A free translation of the aforesaid is as follows:-

“The women are to be respected equally on par with husbands, brothers, fathers, relatives, in-laws and other

kith and kin and while respecting, the women gifts like ornaments, garments, etc. should be given as token of honour.”

Yet again, the sagacity got reflected in following lines: -

“अतुलं यत्र तत्तेजः सर्वदेवशरीरजम ।

एकस्थं तदभून्नारी व्याप्तलोकत्रयं त्विषा ॥”

[Atulam yatra tattejah śarvadevasarirajam| Ekastham tadabhūnnāri vyāptalokatrayam tvisā||]

A free translation of the aforesaid is reproduced below:-

“The incomparable valour (effulgence) born from the physical frames of all the gods, spreading the three worlds by its radiance and combining together took the form of a woman.”

Ultimately, while referring how to organise the camps, the Court observed that everyone should bear in mind that there has to

be change in the mindset of the people, the grammar of the society and unacceptable beliefs inherent in the populace.

Right to education has been regarded by the Court as a human right. What has been envisaged under Article 21-A of the Constitution and the Right to Education Act, 2009 is not being referred. The emphasis is on human rights. In *Election Commission of India v. St. Mary's School*⁴⁰ it has been ruled as follows:

30. The Human Rights Conventions have imposed a duty on the contracting States to set up institutions of higher education which would lead to the conclusion that the citizens thereof should be afforded an effective right of access to them. In a democratic society, a right to education is indispensable in the interpretation of right to development as

40 (2008) 2 SCC 390.

a human right. (See *Leyla Sahin v. Turkey*⁴¹.) Thus, right to development is also considered to be a basic human right.⁴²

Presently, the concept of innocence and fair trial may be delved into as far as the human rights conception is concerned. The Court in *Noor Aga v. State of Punjab*⁴³ recognised that presumption of innocence is a human right as envisaged under Article 14(2) of the International Covenant on Civil and Political Rights. It may be added that the Court observed that this particular right has limitations and cannot per se be equated with the fundamental right of liberty as adumbrated in Article 21 of the Constitution of India.

41 Application No. 44774 of 1998, decided by the European Court of Human Rights on 10-11-2005.

42 (2008) 2 SCC 390, 402, para 30.

43 (2008) 16 SCC 417 : (2010) 3 SCC (Cri) 748.

While discussing noise pollution, the High Court of Madhya Pradesh in *Sayeed Maqsood Ali v. State of M.P.*⁴⁴ has stated thus:

10. ... Every citizen is entitled under Article 21 of the Constitution to live in a decent environment and has the right to sleep peacefully at night. Not for nothing it has been said that sleep is the best cure for waking troubles and the sleep of a labouring man is sweet. Sleep brings serenity. Lack of sleep creates lack of concentration, irritability and reduces efficiency. It cannot be lost sight of that silence invigorates the mind, energises the body and quietens the soul. That apart, solitude can be chosen as a companion by a citizen. No one has a right to affect the rights of others to have proper sleep, peaceful living atmosphere and undisturbed thought. No citizen can be compelled to suffer annoying effects of noise as that eventually leads to many a malady which

44 AIR 2001 MP 220.

includes cardiovascular disturbance, digestive disorders and neuropsychiatric disturbance.⁴⁵

Though the Court did not mention that it is a human right, yet from what has been stated therein, it can be stated with emphatic assurance that it is a human right. The High Court emphasised that diligent attempts are to be made to curb noise starting from the street to the stratosphere.

Balram Prasad v. Kunal Saha, (2014) 1 SCC 38, it has been held that the doctors, hospitals, the nursing homes and other connected establishments are to be dealt with strictly if they are found to be negligent with the patients who come to them pawning all their money with the hope to live a better life with dignity. **The patients irrespective of their social, cultural and economic**

⁴⁵ *Ibid.*, 225, para 10.

background are entitled to be treated with dignity which not only forms their fundamental right but also their human right.

We, therefore, hope and trust that this decision acts as a deterrent and a reminder to those doctors, hospitals, the nursing homes and other connected establishments who do not take their responsibility seriously.

The present generation has to keep itself alive to the situation and build a healthy society. It cannot afford to ponder like Hamlet “to be or not to be” or remain in a Parvati like situation “na jajau na tasthau”. The existing generation must remind themselves of the message of a Latin poet “death plucks my ears and says, Live—I am coming”. Positive action is the call of the day, for to live is to act.

The recognition of human rights in many a jurisprudence is likely to garner further canvas and cover more arena. In *State of Jharkhand v. Harihar Yadav and others [(2014) 2 SCC 114]*, while dealing with the plight of the two corporations, namely, Bihar Hill Area Lift Irrigation Corporation (BHALCO) and Jharkhand Hill Area Lift Irrigation Corporation (JHALCO) inasmuch as they, after the bifurcation of State of Bihar took place to two States, namely, State of Bihar and State of Jharkhand, number of employees were not absorbed and they were paid salary, the Supreme Court referring to the concept of social justice which is the conscience of our Constitution that sustained Indian humanity, observed thus: -

“If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both

the States and the Corporations have conveniently ostracized the concept of “model employer”. It would not be wrong to say that they have done so with Pacific calmness, sans vision, shorn of responsibility and oblivious of their role in such a situation. Their action reflects the attitude of emotionlessness, proclivity of impassivity and deviancy with cruel impassibility. Neither of the States nor the Corporations have even thought for a moment about the livelihood of the employees. They have remained totally alien to the situation to which the employees have been driven to. In a State of good governance the Government cannot act like an alien. It has an active role to play. It has to have a constructive and progressive vision. What would have ordinarily happened had there not been bifurcation of

the State and what fate of the employees of BHALCO would have faced is a different matter altogether. The tragedy has fallen solely because of the bifurcation. True it is, under the law there has been bifurcation and the Central Government has been assigned the role to settle the controversies that had to arise between the two States. But the experimentation that has been done with the employees as if they are guinea pigs is legally not permissible and indubitably absolutely unconscionable. It hurts the soul of the Constitution and no one has the right to do so.”

This reflects the anguish and concern of the Supreme Court when situations affecting human rights come up for consideration before it.

Human rights are to be inculcated in every individual. The various duties which have been enshrined under Article 51-A of the Constitution has its roots in the basic human development which would become sound and fury signifying nothing, if all human beings are not made aware of their human rights as well as human duties. That should be the basic tenet of everyone's life. Creation of harmony amongst all should be the accepted motto. The thought and action must synchronise to respect another individual and create a social order where everyone is in a position to realise his goal and fulfil his desires with dignity.

Everyone in this country is expected to say with serenity that I am a human and whatever concerns humanity is of interest to me, for it is essential not to live one's life but to live and respect others

because it is exquisitely beautiful to all and one cannot afford to shatter the life of anyone. That should be the barometer as well as the stem of human life.
