

**Collected Works  
of  
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# Humanism

**Rationalist Foundation**

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# Development and Human Rights

*(In September 1996, I had given a talk on Human Rights and Development” under the auspices of Mani Bhavan Gandhi Sanghralhalaya, Mumbai, which published that talk in a booklet form. There is much common in that talk and this essay, but here I have proceeded from the concept of development defined comprehensively and have attempted to demonstrate that development itself includes in its ambit human rights which in turn must embrace in their totality human development).*

“Development and Human Rights’ is a mixed subject of economics, law, politics and sociology. Economics as a discipline has been an old one and though great strides have taken place in the evolution of that subject and several new concepts have also been brought into being, the basis of the subject is still the material wants of a human being and the means of satisfying them. Man is an economic animal — he has been so viewed from the days of Adam Smith till today. The unseen hand guided the economic activities of man. Leave man alone to find the best means of satisfying his needs,

The sum total of the actions of the individuals, though atomised, will result in a better economic situation than any that would be brought about by State intervention. That was the laissez faire policy which is now being revived in the new phrase of liberalisation.

Keynes’ advocacy of State intervention was also meant for the restoration of the economic health of the citizens — though it must be said to the credit of Keynes that he regarded unemployment as a degradation of human personality which ought to be prevented or avoided. The welfare economists in the post-war period concentrated, though not exclusively, on economics of welfare of the citizens. Marxism regarded economics as the sole determinant of change. Marx, of course, regarded capitalist system as an evil which made human beings poorer in wealth, health and even culture. The overthrow of capitalism and the establishment of socialism would usher in an age of prosperity and progress in all fields.

No attempt is being made here to test the validity of the various approaches, though I confess to a feeling that economists all over the world have, during the last two decades at least, miserably failed to offer sound guidelines for national and international economic activities. Prophecies have not come true — astrology would have

been acceptable. In a 1985 case, a judge in California, U.S.A., setting aside a local ban on fortune-telling business, compared fortune tellers with “economists who prognosticate interest rates and other business conditions” and “investment counselors who forecast stock-market trends” (The Economist, London, September 26, 1998, p.43). The comparison can be reversed — the economists are like fortune- tellers. Economic forecasts have become as unreliable as weather forecasts. This diversion apart, it must be noted that development has been always understood to mean economic development and that too on macro- level. Progress is measured in terms of gross national product — that is in physical terms. International institutions like World Trade Organisation that have come into existence concern themselves with free flow of material goods and trade in those abstract rights which in essence are rooted in material goods.

Construction of dams, production of steel and cement — these are the sure measures of capital formation. The volume of production of automobiles and other consumer goods is the measure of development. By and large, equitable distribution of goods and services, provision of health services, education, child care and women’s welfare — these and other measures have not been used as parameters of development. While I am saying this, I am not unaware of the great work done by the International Bank for Reconstruction and Development in several countries for the improvement of the quality of life of human beings.

### **Not By Bread Alone**

Yet a wider concept of development — of human development — is necessary and has been recently accepted. Man does not live by bread alone; he is not merely an economic animal. The concept of human development provides an alternative to the traditional view of development equated exclusively with economic growth. This concept focuses on people. Traditionally, even investment in human beings such as better education, better health etc. has been used as a means of increasing their productivity for higher economic growth. Human development of which I am speaking sees economic growth including higher consumption not as an end in itself but as a means of better human development — of enriching the human personality. The emphasis which I am placing on the human aspect of development is also shared by the concept of human rights. Respect for human being is the foundation of the theory and practice of human rights. Development of human being must be regarded as a mode of expressing respect for human being. It is thus that human

development is inextricably connected with human rights. Human development that is relevant here is the development of human personality. A proper programme of human development does not aim at ‘fattening’ human beings. That aim is appropriate for an animal farm. This is not to say that economic well-being is irrelevant. The insistence here is that the whole concern should not be with economic growth as an end in itself — measuring success and failures of a programme in terms of changes in gross national product and stock market indices. The focus must be on how economic growth can promote human development in a sustainable and equitable manner. I will conclude this part by saying that economic well-being is essential for human development but the end of all programmes should not be merely economic. There are several other factors which enrich human lives and, therefore, they should also be developed.

To Prof. Mahbub Ul Haq, a distinguished economist of Pakistan must go the credit of popularising this concept of human development and innovatively evolving the indices of human development. Under his guidance, the United Nations Development Programme has been publishing since 1990, Annual Reports on Human Development which must be compulsory reading for students of economics. Prof. Mahbub Ul Haq is not the inventor of the concept of human development. That concept had already taken shape prior to 1984 during the discussion that culminated in The Declaration on the Right to Development (Prof. Mahbub Ul Haq passed away at New York in July 1998).

### **Genesis of Human Rights**

I must now turn to human rights. I will be brief. Those who are interested may please refer to my Human Rights: A Brief Review (The Radical Humanist, June 1994). The concept of human rights can be said to have its genesis in the American Declaration of Independence (4th July 1776) which proclaimed:

*“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with **certain inalienable rights**, that among these are life, liberty and pursuit of happiness, that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed”.* (Emphasis mine)

### **Inalienability**

The concept of inalienability of rights of human beings is the core of human rights. Later in 1791, the specific rights of the citizens were incorporated in the U.S. Constitution by a group of ten amendments called the Bill of Rights. This was the first time that what later in political and legal literature came to be known as fundamental rights came to be incorporated in a written constitution. The phrase “human rights” had not appeared till after the Second World War. In 1789, after the French Revolution, the French National Assembly adopted the “Declaration of the Rights of Man and Citizen”:

*“...in the presence and under the auspices of the Supreme Being”.*  
(Emphasis mine)

The French Revolution was not an atheistic revolution. The Declaration contained, among others, the following two Articles:

*“1. Men are born and remain free and equal in rights; social distinctions may be based only upon general usefulness.*

*2. The aim of every political association is the preservation of the natural and **inalienable** rights of man; these rights are liberty, property, security and resistance to oppression.”*

(Emphasis mine)

Inalienability of the rights was emphasised also by the French Declaration. Incidentally, the right to property was recognised as an inalienable right — the French Revolution was not a socialist revolution.

Then we take a leap over a century and half to the post-Second World War. The United Nations General Assembly adopted on 10<sup>th</sup> December 1948 (10<sup>th</sup> December being observed as “Human Rights Day” every year) the Universal Declaration of Human Rights (UDHR). Earlier the Charter of the United Nations, signed in San Francisco on 26th June 1945, had specified in Article 1(3) the following as one of the purposes of the United Nations:

*“to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging **respect for human rights** and for fundamental freedoms for all without distinction as to race, sex, language or religion”.* (Emphasis mine)

## **ECOSOC**

Article 13 mentions that the General Assembly shall initiate studies and make recommendations for the purpose of, among others,

assisting in the realisation of human rights. Chapter X Article 62 — provided that the Economic and Social Council (ECOSOC), one of the five organs created by the Charter, may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental rights for all.

Article 68 stipulated that the ECOSOC shall set up a Commission for the promotion of human rights. The Commission on Human Rights which was constituted pursuant to this mandate prepared a draft Universal Declaration of Human Rights. The adoption of the Declaration (UDHR) was not a smooth affair. The General Assembly subjected this text to a thorough scrutiny, voting a total of 1400 times on practically every clause. UDHR was ultimately proclaimed on 10<sup>th</sup> December 1948 by the General Assembly by 48 votes to none, with 6 abstentions. It is not necessary to mention here the various rights enumerated in UDHR. Only one Article, viz. Article 17 is being mentioned:

‘(1) Everyone has the right to own property alone or as well as in association with others.

(2) No one shall be arbitrarily deprived of his property”.

The relevance of mentioning this is that the right to property recognised in UDHR does not find a place in the two covenants which were brought into existence for the implementation of the declared rights.

### **Two Covenants**

The Commission on Human Rights, thereafter, undertook the preparation of two Covenants, viz. International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. Unlike UDHR, which was only a declaration providing what has been called “a Common Standard of Achievement”, the two Covenants oblige the signatories to act in pursuance of these provisions. The Declaration and the two Covenants together have been called International Bill of Human Rights. India has been a party to all these documents.

It would not be inappropriate to mention here that the USA, which regards itself as the great promoter and guardian of human rights, did not sign the two Covenants till 1992. The two Covenants were adopted in 1966 but came into force in 1976 after the requisite number of States ratified or acceded to them. India, it may be stated, acceded to them in 1977, during the Janata Party regime.

### **Landmark Event**

Now we come to consider the question of development. The landmark event in the enunciation of new human rights occurred when, on 4th December, 1986, the General Assembly adopted the Declaration on the Right to Development. The Declaration was adopted by 146 votes in favour. Only one State voted against it — USA. Though this Declaration spelt out more specifically a set of rights, in a seminal form they were mentioned in Article 28 of UDHR, which reads as follows:

“Everyone is entitled to a social and international order in which the rights and freedoms *set forth in this Declaration can be fully realized.*”

It is in this sense that the Declaration of the Right to Development (DRD) can be regarded as a lineal descendant of UDHR. DRD is, compared to other UN documents, a small document consisting of just 10 Articles. In fact, the preamble to the Declaration is as long as the Declaration. Normally the preamble is not of much significance; its function is to provide a key to the understanding of the text that follows. However in this case I wish to refer to the preamble in detail because it explains, in greater detail than what is done by the customary preamble, the provisions of the DRD.

The preamble mentions that the General Assembly while adopting the DRD recognised that development is

- (a) a comprehensive economic, social, cultural and political process,
- (b) that this process is aimed at the constant improvement in the well-being of the population and the individuals,
- (c) that this well-being can be achieved on the basis of the active participation of the individuals.

The General Assembly

- (i) was concerned at the existence of serious obstacles to development constitute by the denial of civil, political, economic and cultural rights;
- (ii) considered that human rights and fundamental freedoms are indivisible and inter-dependent;
- (iii) reaffirmed the close relationship between disarmament and development and opined that the progress in the field of disarmament would considerably promote progress in the field of development;

- (iv) recognised that human person is the central subject of the development process and that the development policy should make the human being the main participant and beneficiary of development;
- (v) recognised that the creation of conditions favourable to the development of peoples and individuals is the primary responsibility of the States.

### **Main Provisions**

The substantive provisions in the Declaration correspond to the recitals in the preamble. Summarising the main provisions of DRD, it may be stated that —

- (1) The States have the primary responsibility for the creation of national and inter national conditions favourable to the realisation of the right to development;
- (2) The States have the duty to co-operate with each other in ensuring development and eliminating obstacles to development;
- (3) All human rights and fundamental freedoms are indivisible;
- (4) The States should, to achieve peace and security, do their utmost to achieve general and complete disarmament and that the resources released by disarmament are used for comprehensive development, in particular that of developing countries.

### **Globalisation**

In view of the certain criticism to come of some steps for the ostensible international economic co-operation, I would specifically mention Article 2(3) of DRD, which is as follows:

States have the right and duty to formulate appropriate national development policies that aim at the constant improvement of the well-being of the entire population and of all individuals, on the basis of their active, free and meaningful participation in development and in the fair distribution of the benefits resulting there from.”

You have to examine how the new programmes of globalisation, liberalisation and integration of national economies into a global economy can be carried out without destroying the right and duty assigned to the States in Article 2(3). This question has been examined in great details by the UN agencies themselves and their findings are disturbing from the viewpoint of those who value

human rights including the right to development - rights that have been recognised by and enshrined in international documents solemnly signed or ratified by the States.

The concept and content of human development has already been noticed earlier in this essay. The development envisaged under the DRD is the same human development. The DRD contains internationally accepted right to development. Human development, therefore, is a human right. One would, therefore, reasonably expect that international conferences engaged in formulating policies and forging agreements, and establishing institutions such as World Trade Organisations (WTO) would give due regard to the provisions of the DRD which contains human rights.

### **WTO**

This was not done. During the period when the UN and UN bodies were engaged in the work relating to the Right to Development, Uruguay round of talks were going on and ultimately GATT was arrived. Yet during all these talks and at the Morocco Conference which endorsed GATT and established WTO, not one word was said on the possible effect of the envisaged globalisation of economies on the right to development and the abilities of the States to effectively implement that right.

The consequences have been most unfortunate from the viewpoint of the developing countries which have been examined and commented upon with sadness and anxiety by the agencies of the United Nations themselves. I will not take you to the reports of those agencies. Fortunately for us, the reports of those agencies have been fairly and accurately recalled in the Introduction of the then Secretary-General of the UN to a monumental book, "*The United Nations and Human Rights — 1945-1995*".

The Secretary General rightly points out that prior to DRD, the primary objective of economic activity was to improve economic and financial indicators. The DRD questioned this approach and instead placed human beings, individually and collectively, at the centre of all economic activity, making them both the central object and the principal beneficiary of development. The Declaration redefined the objective of economic activity which was no longer geared to growth and profits but towards the attainment of human and social objectives through the improvement of the social, economic, political well-being of individuals, groups and peoples.

What is more significant is that the objectives must be determined by the people themselves.

The Declaration insists on certain fundamental human rights principles on which development must be based like equality, equity, social justice etc. These principles cannot be renounced. “The concept of short- term sacrifices, to be made by people in the name of economic growth and balance payment equilibrium, is essentially a violation of these fundamental principles”.

### **Working Groups**

Over a period of now more than ten years, the provisions of the Declaration and the steps taken and to be taken pursuant to those provisions have been examined by Working Groups in the light of parallel developments in other fields. Their conclusions are:

- (1) There are a number of obstacles to implementation of the right to development.
- (2) At the international level, these obstacles include unilateral coercive measures, imposition of the denial of the right of self-determination and the reverse transfer of resources.
- (3) The globalisation of economic life, on the national level, affects the ability of the peoples living in developing countries to make their own economic, social and political choices. (No national plans).
- (4) As a result there is less latitude for Governments in formulating social and economic policy in terms of their own economic and social objectives.
- (5) There have been negative consequences of privatisation for giving effect to the right to development. In particular the privatisation of the basic services provided by Governments has had adverse impact on the poorest segments of the population as a result of the increases in the prices of such services as well as the role of the State vis-à-vis these segments. (You must pay for your health — pay adequately for your food — India is not a Dharmashala).
- (6) In the context of increasing globalisation, developed countries had a particular responsibility to create a world economic environment conducive to accelerated and sustainable development.

### **Pollution**

I wish to add that the developed countries which have mercilessly exploited the world's resources are reluctant to curb their

consumption propensities to make the resources widely available. They are not prepared even to lessen their luxuries to make the world better habitable. The refusal of the USA to reduce its pollution level is an example of this obstinacy. On the other hand, greater burdens are being imposed upon the developing countries in the matter of pollution control. Vasudhaiv Kutumbakam. The whole world is one family. Who cares?

On the occasion of the 40<sup>th</sup> Anniversary of the UDHR, the then Director General of UNESCO gave an address. Let me conclude this essay by a quotation from that address:

“Economic growth is certainly one of the factors of development but one should not be deluded again: there is only one protagonist and only one addressee of the development — the human being. The development seems to be a fundamental right since on this basis larger horizons of liberty and creativity are open and firmer bases of justice are provided. Without development the individual is deprived of real freedom and of the possibility to realise his aspirations and creative potential. Therefore, the right to development falls so naturally in synergism within the totality of human rights”.

That is *advaitism* of development and human rights.

### **References:**

1. *The United Nations and Human Rights:1945-1995* — a UN publication which contains

(I) an excellent introduction by the then Secretary-General of the UN, and

(II) all the relevant UN documents.

2. *Right to Development as a Human Right*” by Danilo Turk in “*Human Rights — Perspective and Challenges*” ed. K. P. Saksena, 1994, Lancer Books. Delhi.

3. (I) “*The Development of the Right to Development*” by Dr. Upendra Baxi

(ii) “*Furthering Human Rights*” by Sridath Ramphal

(iii) “*Human Rights and Development*” by R. Sudarshan, all three in “*Human Rights in the Changing World*: Ed. Justice E. S. Venkatramiah, 1988: International Law Association, Regional Branch (India), Indian Law Institute Building, New Delhi 110 001.

4. *Human Rights Reader* Ed. Walter Laquer & Barry Rubin, A Meridian Book published by the Penguin Group.

## **Human Rights: A Brief Review**

The subject of human rights has been rightly evoking public interest all over the world recently. The interest in the subject is no longer confined to the upper circle of people concerned with the affairs of the State. Larger and larger number of people in different walks of life social workers, persons in academic life, lawyers are becoming interested in the subject and have been participating in activities for the furtherance of the cause of human rights. Rights, as such, have been dealt with in political and philosophical tomes for several years. They have been discussed mostly in the context of the States individually. The sovereignty of the States determined the boundaries of the subject till at least the end of the Second World War. The United Nations Charter and other international instruments that followed have globalised the subject of human rights. The question of human rights can no longer be contained within the borders of “sovereign” States. As will be seen presently the States have been compelled, as members of the international community, to undertake obligations strictly not consistent with the classical doctrine of sovereignty.

What are rights? Rights are not born suddenly; they grow, they evolve. The bundle of rights has no fixed number; the number grows gradually. In philosophical and political theories, there have been debates over a long period upon the origin and nature of rights and the differences in the approach and the understanding of the subject have led to different schools of thought. A discussion of the same is not being attempted here.

### **Origin of Rights**

It will be sufficient to notice briefly how the rights came into being. When a group of human beings come together they form a Society for the conduct of which rules are formulated. These rules regulate the relationships among the members of the society. They create obligations; they also create rights. At some stage in the evolution of the human society, the authority to enforce the rules for the benefit of the members of the society had to be given to someone and that is how the State came into being. It might have come into being as a result of social contract (Rousseau, Hobbes) or might have just grown up (Henry Maine). A study of history thereafter suggests that in due course of time this authority grew into a State, mostly Kingdom in the earlier stage. The State became all powerful, sovereign which gave orders to all and received from none.

This was bound to lead and did lead to the stifling of the rights of men though for the protection of such rights (and for the enforcement of corresponding obligations) the State was created or born. An early protest against the arbitrary exercise of sovereign power is illustrated by the Magna Carta. The Magna Carta which has been called “the first great step on the constitutional road” (History of England by G.M. Trevelyan, p. 169) was not really the result of any popular movement. It was a document extorted by some barons from King John (1215 AD) who was short of funds. The demands made by the barons and conceded by King John, however, led in the end to the undreamt of liberties for all. This Charter of 1215 along with some other instruments that followed reaffirmed and expanded the liberties of 1215, provided freedom from arbitrary arrest, trial by jury and the *habeas corpus*. Sir Ivor Jennings says that “the liberties of England specified in Magna Carta must seem, to the modern reader, to be very odd collection, and for the most part they are obsolete” (Magna Carta, p.14). Nevertheless, the path-breaking nature of that document cannot be under-estimated. It set in motion a process, a movement which has not come to rest even now, though the tyrants of today are not merely monarchs but also impersonal States.

Bill of Rights of 1688, enshrined in the otherwise unwritten Constitution of England, was said to be the product of “the glorious revolution”. As G.M. Trevelyan has pointed out, the true “glory” of that revolution “lay in the fact that it was bloodless, that there was no civil war, no massacre, no proscription, and above all that a settlement by consent was reached of the religious and political differences that had so long and so fiercely divided men and parties” (op.cit. p 472). Though this document was called a Bill of Rights, it was essentially a settlement reached between different interests’ groups. Nevertheless it did guarantee certain rights to the Englishmen and in particular it put an end to the divine right of Kings. John Locke who was the inspiration behind this document was after all a propounder of the theory of social contract.

### **Self-evident Truths**

Within a century of the “glorious revolution”, two other revolutions took place and they in a sense revolutionised the concept of rights. The authors of The (American) Declaration of Independence (4th July 1776) declared:

*“We hold these truths to be self-evident, that all men are created equal that they are endowed by their Creator with certain inalienable rights and that among these are life, liberty and the pursuit of happiness, that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.”*

The American Constitution, drafted in 1787 after great debates and ratified in 1791, established a federal State independent of the British power. But the rights of the citizens were incorporated in the Constitution almost immediately by ten amendments, together called Bill of Rights, in 1791. This was the first time that what can be called fundamental rights were made a part of the written Constitution. It is a matter of common knowledge that England has no written Constitution nor does it have anything corresponding to Bill of Rights. Lord Hailsham once said that you may have “Elective Dictatorship”. That is why even in England where as Narii Palkhiwala says, freedom is bred in the bones of the people, great Judges like Lord Hailsham, Lord Scarman, Lord Gardiner, Lord Salmon, and Lord Devlin have advocated the incorporation of a Bill of Rights in British law [on p. 165 in “Human Rights and Legal Responsibilities”, a Chapter in “Human Rights in the Changing World” (HRCW, for short, hereafter), Ed. Justice E.S. Venkataramiah.]

### **French Revolution**

Almost contemporaneously with the American Constitution came the French Revolution in 1789 and its Constitution. The texts of these Constitutions “for the first time set forth principles which are instantly recognisable as propositions of modern human rights law, properly so called” (The International Law of Human Rights by Paul Sieghart, p. 87). Sieghart then proceeds to summarise those principles as follows:

“(1) The principle of universal inherence:

Every human being has certain rights, capable of being enumerated and defined, which are not conferred on him by ruler, nor earned or acquired by purchase, but which inhere in him by virtue of his humanity alone.

(2) The principle of inalienability:

No human being can be deprived of any of those rights, by the act of any ruler or even by his own act.

(3) The Rule of Law:

When rights conflict with each other, the conflicts must be resolved by the consistent, independent and impartial application of just laws in accordance with just procedures.” (ibid. p.8)

These developments freed the concept of rights from the shackles of divinity or the boons from the State. The human rights are those rights which inhere in human beings by virtue of their being human. They are necessary for the realisation by man of his potential as a human being. As a result of possessing and exercising these rights, a human being is able to have recourse to ‘pursuit of happiness’. It must also be noted that these rights are human rights and not the rights of persons belonging to any race, nation, region, religion, caste or sex. They are in that sense universal. Human beings everywhere must have them. If a distinction is made among them, it must result in the deprivation of these rights for some, leading to discrimination. It may be, at a given time that in some countries people or some people are not able to exercise those rights. But that is not a reason for denying those rights to those people. Freedom is indivisible; so is liberty. It is this realisation which has resulted in the international concern for human rights every where and has led to the adoption of several declarations, covenants and conventions to which reference is being made later. These instruments have imposed several obligations on the members of the international community and the States have taken or will necessarily undertake modifications of their laws and practices to conform to these obligations.

### **Western Concept**

An objection is taken in some quarters that the concept of human rights is a western concept, alien to oriental heritage and culture. Mr. V.N. Gadgil, a product of London School of Economics and the Law Inns of London is the regular spokesman of the Congress Party. He says:

*“The Western view of these (human rights) was based essentially on liberalism of the modern West with its emphasis on civil and political rights such as freedom, right to a fair trial, right to political participation and so on.. The non-Western perception was that there can be in a given society alternative conceptions of human dignity that seek that dignity through devices other than human rights. Cultural differences justify even fundamental deviations from ‘universal’ human rights standards.” (“Upholding Human Rights”, Indian Express, 1st April 1992).*

The fallacies in this argument are obvious. In the first place, human rights are not “de vices”. They cannot be manipulated by other devices though an attempt was made to do so through “guided democracy” or “disciplined democracy” during the infamous Emergency (*Anushasan Parva*) of which Mr. Gadgil was a captive. Differences in culture among the peoples of different countries do not make those peoples less human deserving lesser or no human rights. The argument must lead to the position that Orientals are less human or human in a different way so that they must be content with lesser human rights or human rights of a different kind.

Despotisms may also take different forms in countries with different climates. The core of despotism is the same every where just as the core of human dignity is the same every where. The benevolent dictatorship in which Bal Thackeray believes, according to this view, is best suited to the Indian genius. This view can very conveniently be used in support of Nazism in Germany, Fascism in Italy or for that matter “*Anushasan Parva*” in India.

There may be differences in culture, different peoples may be and are in different stages of economic and social development. It is for this very reason that it is necessary to universalise the concept, practice and protection of human rights. Concepts of the justice of laws, the integrity and dignity of the individual, safeguards against arbitrary rule, freedom from arbitrary arrest and persecution, participative democracy - these are relevant to human beings everywhere.

### **Human Rights and Poverty**

In connection with the argument that human rights and ideas of liberty are not feasible in countries which have not solved the problem of poverty and want, Mr. F.S. Nariman recalls the words of late Jose Diokno, the great human rights activist of the Third World and the leader of the Philippines grass roots movement called “FLAG”. Rejecting what he called the ‘currently fashionable justification for authoritarianism in Asian developing countries’, Diokno said:

*“One (justification) is that Asian countries are authoritarian and paternalistic and so need governments that are also authoritarian and paternalistic; that Asia’s hungry masses are too concerned with providing their families with food, clothing, and shelter, to concern themselves with civil liberties and political freedoms; that the Asian conception of freedom differs from that of the West; that in short*

*Asians are not fit for human rights. ... (This) is racist non-sense... Authoritarianism promotes repression not development- repression that prevents meaningful change and preserves the structure of power and privilege.”*

(“It Pays To Be Free”, HRCW, p. 154)

Freedom and food are not alternatives. That is the rationale behind the International Covenant on Economic, Social and Cultural Rights. More on this a little later. This should also dispose of Mr. Gadgil’s another argument (in the article mentioned earlier) that the Western view does not “highlight the right to subsistence, right to education and above all right to development”

It cannot be doubted today that the enjoyment of human rights bears an essential connection with economic development, each being necessary to the other. Paul Sieghart treats development as conceivable in two directions - the right vested in the individual and the right vested in the State (that is, the “peoples”). The individual’s right to development is the right to participate in, and benefit from, the process of development intended by the State for all members of the community so that each individual may enjoy all his human rights, whether civil, political, economic, social or cultural. On the other hand, the State can demonstrate that it has fashioned such an environment for its citizens and claim international assistance for its progress. (See “The Lawful Rights of Mankind”, by Paul Sieghart, 1985 OUP.) In this context the Delhi Declaration (December 1993) on World Education rightly called upon the donor countries to give assistance without putting any ceiling on it.

### **U N Charter**

The recognition of the universal nature of human rights and of the need to make provision for upholding them immediately in the post-Second World War situation were recognised in the United Nations Charter. Article 1(3) of the United Nations Charter (UNCH) includes, among its purposes, the achievement of “international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.

Article 55 of the Charter recognises that conditions of stability and well-being are necessary for the peaceful and friendly relations among nations based on respect for the equal rights and self-determination of peoples. For the creation of such conditions, the United Nations is enjoined to promote, among other things,

“universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. Under Article 56, the Members of the UNO pledge themselves to take joint and separate action in co-operation with the UNO for the achievement of the purposes set out in Article 55.

There has been some debate on the nature and extent of the obligation imposed by Article 56 read with Article 55. International law which is not backed by enforcement machinery (there is not a World Government yet) imposes duties which are obeyed by the States under international pressures and the States’ desire to be and continue to be members of the comity of nations. No State has stated that it has, despite its signature on UNCH, no obligation by that document. It has also been suggested by critics that promoting respect for human rights does not mean protection of human rights. The argument is self-defeating. You cannot promote respect for something which you trample upon. Paul Sieghart has pointed out that “The International Court of Justice has had occasion to consider, albeit obiter, the legal effects of UNCH 55, and has stated that they bind Member States (of the UN) to observe and respect human rights” (ILHR, p. 52). This was in the “Advisory Opinion on the Legal Consequences of the Continued Presence of South Africa in Namibia” in 1971. (For a fuller discussion and proper understanding of the binding nature of international law, Paul Sieghart (supra) may be consulted).

### **Universal Declaration**

Next came the Universal Declaration of Human Rights (UDHR) which was unanimously adopted by the United Nations General Assembly on 10th December 1948. Hence 10th December every year is observed as Human Rights Day. Mrs. Eleanor Roosevelt, widow of President Roosevelt, the author of Four Freedoms, was the Chairperson of the drafting committee of the Declaration. The UDHR declares, in the first paragraph of the Preamble that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. (Emphasis is mine). The human family is treated as one family and it is as members of this family that human beings are to be treated. The rights are human rights and for the protection of these human rights the States are required to take action. The rights are enforceable against the State. It is necessary to remember this viz. the primary correlative duties in respect of human rights fall on States and their public authorities,

not on other individuals. More on this in the discussion later on the human rights and the terrorists.

The UDHR contains an elaborate catalogue of human rights and, as the document itself says, UDHR is “a common standard of achievement for all peoples and all nations...”

In due course it became necessary to particularise and classify the human rights. In 1950 The General Assembly of the UNO passed a resolution declaring that “...the enjoyment of civil and political *freedoms* and of economic, social and cultural *rights* are interconnected and interdependent”. (Emphasis is mine). The two drafts, one on civil and political freedoms and the other on economic, social and cultural rights, were prepared in 1954 and the General Assembly gave the widest publicity to them. The Governments were invited to study and comment on them. The preparation of the drafts to be adopted was completed in 1954. However it took another 12 years before the General Assembly adopted these instruments on 16th December 1966.

### **Covenants of Rights**

We are here concerned with three documents. First, the International Covenant on Economic, Social and Cultural Rights (ICES). It came into force on 3rd January 1976, three months after the date of deposit with the Secretary-General of the thirty-fifth instrument of ratification or accession, as provided in Article 27. As on 31st December 1987, the Covenant had been ratified or acceded to by 91 States, India being one of them.

The second is the International Covenant on Civil and Political Rights (ICPR) which came into force on 23rd March 1976, three months after the date of deposit with the Secretary-General of the thirty-fifth instrument of ratification or accession as provided in Article 49 of the document. As on 31st December 1987, the Covenant had been ratified or acceded to by 87 States, India being one of them. Till then the United States had not signed either instrument.

Before proceeding to the third instrument viz. the Optional Protocol to the International Covenant on Civil and Political Rights (ICPROP) it would be advantageous to briefly review the first two instruments. ICES which was drafted parallel with ICPR contains 15 articles. The Preambles and Articles 1, 3 and 5 of ICES and ICPR

are almost identical. Both the instruments define a set of rights largely derived from UDHR. The preamble to each covenant recalls the obligation of States under the UNCH to promote human rights, reminds the individual of his responsibility to strive for the promotion and observance of those rights. It also recognises that in accordance with UDHR, the ideas of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights as well as his economic, social and cultural rights.

ICES deals, naturally, with economic, social and cultural rights which include the rights to equality, equal remuneration, fair wages, equal opportunity in employment, association of workers, etc. These rights are “recognised” by the State parties to the Covenant. Article 2 states that each State Party “undertakes to take steps” for the realisation of the rights and “undertakes to guarantee” that the rights will be exercised without discrimination. Because of this language in Article 2 and other Articles, it has been suggested that the obligation assumed by the State Parties under ICES is qualified and progressive. As will be seen presently, the language in ICPR is different and for valid reasons.

### **Civil and Political Rights**

ICPR contains 27 Articles defining and circumscribing in great details a variety of rights and freedoms. Part III contains the list of these rights which include the rights to seek pardon in case of death sentence, not to be subjected to double jeopardy, freedom from torture and bondage, right to security of person, etc. The important point to be noticed is that in Article 2 each State Party “undertakes to respect and ensure to all individuals ... the rights recognised in the present Covenant without distinction of any kind...” The undertaking is not qualified to taking steps. It is only where the necessary law or machinery is not in existence that the State Party undertakes to take the necessary steps, by legislation or otherwise, to give effect to the rights mentioned. The rights mentioned are the well known civil and political rights which need not be enumerated here.

These civil and political rights are often referred to as “first generation rights”. These are the traditional rights which mostly called for a negative obligation on the part of the State to desist from interfering with the exercise of individual freedom. The rights covered by ICES require the States to discharge a positive duty to create conditions for the realisation of these rights. They were

traditionally not recognised as rights. But the expanding concept of human rights embraced these rights and since they arrived on the scene later than civil and political rights, they have been called “second generation rights”. However they are not less important in the modern world.

These three documents, UDHR, ICES and ICPR, are historic documents, setting before mankind at one time ideals that should inspire men and nations everywhere. UDHR has come to be recognised as a historic document articulating a common definition of human dignity and values. The other two documents, ICES and ICPR, have placed upon the States a legal as well a moral obligation to promote and protect human rights and fundamental freedoms. These documents together constitute international Bill of Human Rights. From these documents have issued a large number of other conventions and treaties- both universal and regional.

A brief reference may now be made to Optional Protocol to the International Covenant on Civil and Political Rights. The Optional Protocol came into being at the same time as ICPR and under it a State Party ratifying the Protocol accepts the right of an individual in the State to submit a communication to the Human Rights Committee for the violation of the Covenant. In such a case the HRC can sit in judgment over the action of a sovereign State and give its Opinion. As on December 1987, 40 States which have subscribed to ICPR also became parties to the Protocol. India is not one of them.

### **Step towards Global Unity**

The rights of man which are recognized by international agreements to which States are parties naturally form the subject of international concern. In the long run this recognition of the universality of human rights may bring about global unity. The process may be slow and halting but the direction is promising. Several organizations both formal and informal, have been monitoring violations of human rights. Mention must be made, on the international level, of Amnesty International, established in 1971, reports of which have high credibility and have embarrassed several Governments. In India we have, among others, People’s Union of Civil Liberties (PUCL).

Theoretically India has an impressive array of rights given to its citizens, we have in our Constitution an entrenched bill of rights in the form of Fundamental Rights contravention of which is

impermissible by legislative or executive action. Our Constitution-makers found it desirable and possible to include a chapter on fundamental rights despite the unsettled, gloomy conditions in the immediately post-independence period. This was partly because even during freedom struggle, the need for having a provision for fundamental rights was kept in mind. A resolution on Fundamental Rights and Economic Policy had been passed in Karachi Congress in 1931. India has acceded both to ICES and ICPR, though as late as on 10th April 1979, that is, during the Janata regime.

### **India's Record**

In practice, however, India's record in the field of human rights has been dismal. Punjab and Kashmir have been the grave-yards of human rights. Amnesty International has repeatedly indicted India for its violation of human rights by citing authentic, verifiable instances. Custodial deaths and violence have been rampant and even the Law Commission has called for an amendment of the law providing for presumption of guilt on the part of the officer in charge of a police station in the case of custodial death. The nation having been shamed by the atrocities committed on women in custody, the Parliament has provided for higher punishment in case of custodial rape. What is shocking and shameful is that none of the political parties in India has taken up the question of human rights on its agenda.

Whatever has been achieved in India is the result of an alert judiciary and active social groups. The prisoners' rights, equal pay for women, the freeing of bonded labour, minimum wages for building workers, the enlargement of the concept of 'life and liberty'- these and several other such questions have been handled by the Supreme Court of India.

(For a slightly more detailed discussion on this subject, reference may be made to my article "Human Rights - The Indian Experiment" and "Human Rights Decisions and Techniques" by Dr. Dhananjaya Chandrachud, both in HRCW).

The question of human rights in a society of terrorism must be squarely faced and properly understood and explained. This is necessary because human rights activists have been accused of condoning the human rights' violations at the hands of the terrorists and of Un- justifiably criticising the State actions much to the discomfiture of the State. It has been stated on behalf of the

Government that the violations of human rights of innocent citizens at the hands of the terrorists cannot be ignored. Indeed they cannot be and nobody, none among the human rights activists, suggests that it should be. The criticism against the human rights activists in this regard is the result of confused thinking or for scoring a debating point or both.

Early in 1993, five Chief Ministers (notable among them Andhra Pradesh Chief Minister) argued in the preparatory meeting of the National Human Rights Commission that the Commission's task should also include the examination of human rights' violations by the terrorists. Strange thoughts! The terrorists are not indulging in violations of human rights - they are indulging in crimes. The law of the land and the State machinery must take care of the same. You do not need a Commission for this. It is elementary that human rights are distinguished from other rights by the fact that the primary correlative duties in respect of human rights are on States and the public authorities and not on other individuals, let alone the terrorists.

### **Terrorists and Human Rights**

The terrorists are by definition anti-social, disruptive and criminal elements. There cannot be a debate on the question whether the terrorists' acts are condemnable or not. To say that terrorists should adhere to human rights is to betray a total lack of understanding of terrorism and of human rights. Terrorists strike at democracy and peaceful life of society and they need to be dealt with firmness and determination. No one, not even the strongest human rightist, can quarrel with the Government's effort to eliminate terrorism.

The conscience of democrats and believers in the rule of law is shocked when, as in Sapore in January 1993, Security Forces ran amuck and massacred 60 innocent citizens as a reprisal for the killing of two BSF men by the terrorists. Law does not permit and can-not condone such actions. Democratic conscience is shocked when it is claimed that some men were killed in encounters when all the injuries on these men are on their backs. Conscience is also shocked when people taken in custody disappear. It is the lawlessness of the law-enforcing agencies that makes an assault on the human rights and this needs to be monitored and curbed by the Human Rights Commission.

In the field of human rights, the role of non-governmental voluntary organizations has always been important. It is now recognized that

much of the initiative for the development of the concept of human rights came from non-governmental organizations such as the Lawyer's Associations, Trade Unions, etc. Even after the formal adoption of International Bill of Human rights, NGOs have been active in seeing that proper action is taken and proper law is made and implemented by the Governments. The Amnesty International has been playing a unique role in this regard. On the role of NGOs one may profitably read the article on this subject in HRCW (p112). The Radical Humanists will find in this field a task suited to their intellectual equipment and temperament.

The activity in the field of human rights is not philanthropic work; it is not humanitarian work. The individual human being is no longer the object of compassion; he is the subject of right. The connection between humanism and human rights is unbreakable. Let me quote V.M Tarkunde:

“Humanism may be defined as a philosophy and an attitude of mind which gives primacy to the individual, and his or her right to live in freedom and with dignity. Since the recognition of the freedom and dignity of the individual is the basic principle of democracy, humanism can properly be described as philosophy of Democracy. It also provides the philosophical background of human rights, because these rights can be enjoyed only in a society which is inspired by the values of democracy in all aspects of life - social, economic, and political...”

(Philosophical Background of human Rights’’ in HRCW, p 350)

And finally the number and contents of the human rights cannot remain fixed or frozen. First came the civil and political rights; then came the economic, social and cultural rights. The "third generation rights" are already being talked of. They are the rights of individuals as belonging to a group, neighborhood. A typical example of such rights is the environmental protection. The unfolding of the potential of the human beings will demand formulation of fresh human rights, fresh policies and fresh programmes.

Abbreviations used

UNCH: *United Nation Charter*

HRCW: *Human Rights in a Changing World* Edited by Justices E.S. Venkatramiah (Pub International Law Association Regional Branch, India)

ILHR: *The international Law of Human Rights* - by Paul Sieghart  
(OUP)

UDHR: *Universal Declaration of Human Rights*

ICES: *International Covenant on Economic, Social and Cultural Rights*

ICPR: *International Covenant on Civil and Political Rights*

## Human Rights - the Indian Experiment

*(The Bombay Philosophical Society had arranged a series of lectures on Human Rights by different speakers. The following is the text of the lecture delivered by Justice R.A. Jahagirdar)*

Though it is not necessary to go into a detailed analysis of the genesis or the origin of rights for my talk, I would give a brief, a very brief, summary of the history of development of rights and of human rights. The Magna Carta (1215) has been regarded as the first step on the road to the constitutional rights. It was actually a bundle of rights, insignificant in number, wrested by the barons of England from King John who was short of money by providing him with funds in exchange for rights which included the trial by jury, freedom from arbitrary arrest and the *habeas corpus*. Sir Ivon Jennings says rightly that “the liberties of England specified in *Magna Carta* must seem to the modern reader, to be very odd collection and for the most part they are obsolete.”

The Bill of Rights (1688) was essentially a settlement by consent of the religious and political differences which had plagued England for a long time. It was mainly a victory for the rising merchant class, though as a necessary consequence it put an end to the concept of divine right of Kings. Credit for this must go to John Locke who was the inspiration of the Bill which can be said to reflect the theory of social contract of which Locke was the author.

A great stride was taken towards the establishment of rights — human rights — by the American Revolution. The Declaration of Independence (1776) contained the concept of human rights in the following ringing words:

*We hold these truths to be self evident that all men are created equal by their Creator with certain inalienable rights that among these are life, liberty and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed. (Emphasis added).*

In the American Constitution as originally enacted certain rights of the citizens were incorporated in 1791 by ten amendments which have been called the Bill of rights. Not one of these rights has been subsequently deleted, curtailed or diluted.

The French Revolution was heralded by the Declaration of rights of Man and Citizens (1789). The texts of the American and French Constitutions, for the first time, set forth principles which are

instantly recognizable as propositions of modern human rights law properly so-called. (The International Law of human Rights by Paul Sieghart p 87)

Sieghart proceeds to summarize those principles as follows:

(1) *The Principle of Universal Inheritance:*

Every human being has certain rights capable of being enumerated and defined, which are not confined on him by ruler, nor earned or acquired by purchase, but which inhere in him by virtue of his humanity alone.

(2) *The Principle of inalienability:*

No human being can be deprived of any of those Rights, by the act of any ruler or even by his own Act.

(3) *The Rule of Law:*

When rights conflict with each other, the conflicts must be resolved by the consistent, independent and impartial application of just laws in accordance with just procedures.

(Ibid p.8)

That brings us to the developments after the Second World War. Article 1(3) of the United Nations Charter includes, among its purposes, the achievements of “international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”.

The next stage was the adoption of *Universal Declaration of Human Rights* by the United Nations General Assembly on 10<sup>th</sup> December 1948. Then came two international Covenants — *International Covenant on Economic, Social and Cultural Rights* 1966 which came into force on 3<sup>rd</sup> January 1976 and *International Covenant on Civil and Political Rights* 1966 which came into force on 23<sup>rd</sup> March 1976. These two Covenants along with *Universal Declaration of Human Rights* constitute International Bill of Human Rights.

In India fundamental rights have been enshrined in Part III of the constitution. This was natural because during the freedom struggle there was an acute awareness of the need of providing for fundamental rights in independent India. In Karachi Congress in 1930 a resolution on fundamental rights was passed, The phrase “human rights” does not appear in the Constitution because what

were regarded as such rights were constitutionally converted into fundamental rights. Therefore by and large the story of human rights in India is co-extensive with the history of the development and enforcement of fundamental rights.

I will show presently that history of human rights embracing within itself fundamental rights has been written by the active judiciary of India. Therefore when I am talking of the Indian experiment with reference to human rights I will be dealing with the role played by the judiciary, more particularly by the Supreme Court of India in the field of human rights.

But before this happened there was a shock in the form of the judgment of the Supreme Court in *ADM Jabalpur vs Shivkant Shukla* (AIR 1976 SC 1207). A brief background of the case: In *Keshavanand Bharati vs the State of Kerala* (AIR 1973 SC 1461), the Supreme Court by a majority judgment of 6 to 5 held that the Parliament did not have unlimited power to amend the Constitution. Among the judges who so held were three judges who were senior to A.N. Ray J and who would have by turn become the Chief Justice. After Chief Justice Sikri retired, A.N. Ray J was appointed as the Chief Justice superseding three senior judges who, therefore, resigned.

In 1976 June what is known as internal emergency was proclaimed. In exercise of the power vested in him under Article 35 of the Constitution, the President declared that the right to move any Court for the enforcement of fundamental rights is suspended. Eight High Courts held that the Presidential order did not preclude the Courts from examining whether the orders of detention were tenable on the ground, among others, of mala fide exercise of power. The Supreme Court of India by majority of 4 to 1 in *ADM Jabalpur* overruled the High Courts' decisions and held that the Courts cannot go into the question of the legality or the validity of the orders of detention at all. This decision has been described as a self-inflicted wound at best and judicial Hara-kiri at worst. There was dismay that the Courts would not come of this self-imposed "*lakshman rekha*".

But they did in 1977 after Indira Gandhi went out of power. An era of judicial activism was ushered in and this continued even after Indira Gandhi returned to power in 1980. The judges of the Supreme Court apologised in word and deed for their judicial abdication during 1975 -1977. The history of human rights in India thus became the history of judicial activism.

I must, therefore, explain what judicial activism has come to mean. In normal judicial process, strict rules of interpretation were insisted upon. Court proceedings were adversarial and, therefore, only persons whose rights were affected could approach the Courts for relief. One must have locus standi for seeking relief. To use a cliché, any Tom, Dick and Harry could not approach the Courts asking that justice be done to some other person.

Judicial activism has enlarged the nature and scope of judicial process. Strict rules of interpretation were not insisted upon when the context required broader approach. Greater emphasis was laid on justice in justice according to law. As, necessary corollary of judicial activism the rule regarding locus standi was relaxed.

The doctrine of locus standi was historically necessary because that was the way the Courts could save themselves from spurious or vicarious litigation. But while dealing with fundamental rights or human rights this rule inhibited genuine claims from reaching the Courts. As S.A. de Smith, the well known commentator on judicial review, has pointed out:

*All developed legal systems have had to face the problems of adjusting conflicts between two aspects of public interest - the desirability of encouraging individual citizens to participate actively in the enforcement of the law, and the undesirability of encouraging the professional litigant and the meddlesome interlopers to invoke the jurisdiction of the Courts in matters that do not concern them.*

*(Judicial Review of Administrative Action: p. 409: Stevens and Sons London 1980)*

This meant that public-spirited persons or social action groups with the interest of disadvantaged people at heart should be allowed to move the Courts even though they themselves may not be directly affected. This approach got further enlarged when the Courts allowed the questions of public interest to be adjudicated upon by the Courts on being asked to do so by person or groups not directly concerned with such questions. This litigation which came to be known as public interest litigation led to the following results.

1. It enabled the Courts to reach the poor and disadvantaged sections of the society whose rights were affected adversely.
2. The individuals or groups of people were enabled to raise matters of common concern arising from dishonest, inefficient or malafide exercise of power by the government functionaries.

3. Public awareness of and participation in the process of Constitutional adjudication was increased.

(See Judicial Activism by Dr. S.P. Sathe. O.U.P. 2002 p.201)

Judicial activism marching hand in hand with public interest litigation has been particularly useful in dealing with what can be called third generation of human rights. The original content of the philosophy of fundamental freedoms was limited in the main to the civil and political rights of the individual and they have been referred to as “first generation” rights. They in large part call for a negative obligation on governments to desist from interfering with exercise of individual liberty. The U.S. and French Constitution were mostly concerned with these rights which are also incorporated in the International Covenant on Civil and Political rights.

By the time the U.N. Charter and Universal Declaration of Human rights came to be adopted it was being recognized that the concept of human rights was a dynamic one. The horizon of liberty was expanding. The concept of human rights now includes economic, cultural and social rights which are designated as the “second generation” rights. These rights place a positive duty on Governments to act in order to enable the citizens to realize these rights.

These two groups of rights are complementary - a fact which was emphasized in the International Conference on Human Rights at Teheran in 1968 in the following simple words:

*In our day, political rights without social rights, justice under law without social justice, and political democracy without economic democracy no longer have any true meaning.*

Teheran conference was held to mark the 20<sup>th</sup> anniversary of UDHR.

The concept of human rights expanded further to include those conditions of life which affect societies collectively, not merely individuals. These rights which include right to satisfactory environment, rights of ethnic minorities etc. have been called the “third generation” rights. Realization of these rights requires high degree of activism on the part of the governments.

The Supreme Court of India has liberally, almost in an elastic manner, interpreted Article 21 of the Constitution which is very simply worded.

21. *Protection of Life and Personal Liberty - No person shall be deprived of his life or personal liberty except according to procedure established by Law.*

By a series of decisions the Supreme Court poured more and more meaning into this article and enabled itself to expand the limits of liberty and the connotation of the word 'life' in the Article. The first of the series of such decisions was *Maneka Gandhi vs Union of India* (AIR 1978 SC 597). The facts of this case were very simple. The passport of Maneka Gandhi, the daughter-in-law of Indira Gandhi, had been impounded by the Central Government headed by Morarji Desai of which Charan Singh was the Home Minister. The legality of this action was challenged by Maneka Gandhi.

Earlier in *Satwant Singh vs Assistant Passport Officer* (AIR 1967 SC 1836), the Supreme Court had held that the right to personal liberty included the right to go abroad and in the absence of a law and procedure for regulating the grant or denial of passport, passport could not be refused. In response to this judgment the Parliament enacted "The Passport Act 1967". It was under the procedure of this Act that Maneka Gandhi's passport was impounded.

The Supreme Court held that liberty mentioned in Article 21 also included all rights under Article 19. The procedure for denying the right to go abroad which was a fundamental right must not be in violation of the rights under Article 19 and should also be fair, just and reasonable. The action of the Government in impounding the passport of Maneka Gandhi without giving a hearing to her could not be sustained in law. The decision of the Government, however, was not set aside on the assurance of the Attorney General that a post-decisional hearing would soon be given.

Now let me turn to some of the cases decided by the Supreme Court which show what can be termed as its libertarian approach. I will divide these cases into three classes — political and social questions, economic and cultural questions and questions relating to what I have earlier called third generation human rights.

The Constitution of India permits preventive detention of any person under Article 22 subject to certain conditions. An authority passing an order for preventive detention shall as soon as possible communicate to such person the grounds for detention and shall afford him the earliest opportunity of making a representation against the order. Till *Khudiram vs State of West Bengal* (AIR 1975 SC 556) it was regarded as sufficient that if the detaining authority

informed the detainee that he was being retained in order to prevent him from acting in a manner prejudicial to national security, if that was the ground of detention. In *Khudiram* it was held that the grounds of detention include facts constituting the grounds. Later judgments (after 1977) went further and insisted that documents which contained the facts embodied in the grounds were necessary parts of the grounds and they should be supplied. That is the documents considered by the detaining authority must be supplied. Even if a single document considered by the detaining authority is not supplied to the detainee, it would be in breach of the duty of informing the grounds of detention and hence the order of detention would be void. The Court went further and held later that even the documents not considered by the authority should be supplied to the detainee if those documents were vital in the sense that would have affected the subjective satisfaction of the detaining authority. A delayed supply of the document would vitiate the order of detention - a proposition which has now meant that the documents must be supplied with the order of detention itself.

Detainees should not only be afforded an opportunity of making a representation but in the order of detention itself it should be mentioned that the detainee has a right to make representation to the detaining authority, the advisory board which has the power of revoking the order of detention and the government.

The representation must be considered expeditiously. If the representation which is forwarded through the head of the prison where a person is detained is not forwarded expeditiously to the authority to whom the representation is addressed, the order of detention ceases to be valid. None of these propositions spelt out by the Supreme Court can easily be inferred from the clear language of Article 22 of the Constitution. This is judicial activism at its best.

In the matter of prisoners also the Supreme Court has laid down the law in terms not strictly warranted by law. Prisoners are of two types - under trial prisoners and convicted prisoners. Humanization of criminal justice has been achieved by ordering the release of persons in custody for long periods only because they could not avail of bail or had been denied. (*Hussainara Khatoon vs State of Bihar*: AIR 1979 SC 1360). In this field the propositions that emerge from the conspectus of decisions of the Supreme Court can be summarized as follow:

1. No procedure can be regarded as fair, just and reasonable, if the procedure results in delayed hearing.

2. A fair trial is speedy trial in criminal cases. It is a crying shame upon our judiciary which keeps persons in jail for years in without trial.

3. Bail, not jail, should be the rule. The issue is one of liberty, justice, public safety and burden on the public treasury all of which insist that a developed jurisprudence of bail is integral to a socially sensitized judicial process.

4. Lawyers' services constitute one ingredient of fair procedure in a criminal trial.

5. An arrested person shall be informed immediately the reasons of arrest; he shall be given the opportunity of contacting his lawyer. Series of guidelines to be followed on the arrest of a person, well given in *D.K. Basu vs State of West Bengal* (AIR 1997 SC 610) which also stated that these guidelines shall be prominently displayed on the notice board of every police station.

6. Handcuffing is permitted only in extra-ordinary circumstances. The Central Government has been directed to frame rules and regulations regarding the circumstances in which handcuffing should be resorted.

7. In the case of custodial deaths compensation can be awarded.

These and other propositions are based upon the premises that

1. The writ of rule of law runs within the jail system.

2. The Courts will not permit inhumanity to the prisoners.

3. The Constitution does not part company with the prisoners at the gates of the prison.

Coming to the second generation rights, namely economic and social rights, the first judgment is in *Peoples Union of Democratic Rights vs Unon of India* (AIR 1982 SC 1473). When Asiad Games were to be held in Delhi, thousands of workers were hired for large scale construction of roads, flyovers, Khelgaon for housing the participants, and the stadium and other facilities for the games. It was found that they were not being paid proper wages and they were working in inhuman conditions. A social activist organization brought these facts to the notice of the Supreme Court by a letter and sought appropriate reliefs. A bench of two judges (Bhagwati and Bahrul Islam JJ ) held that

1. The organization had locus standi to agitate on behalf of the unorganized socially disadvantaged persons.
2. This could be done by means of public interest litigation.
3. A letter to the Court could be treated as a petition and the author of the letter could be treated as the petitioner.
4. When a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him falls within the definition of “forced labour” which is prohibited by Article 23 of the Constitution.
5. The word ‘force’ does not mean merely physical force but force arising from economic or social circumstances.
6. The Court can issue direction for payment of minimum wages.

In this judgment there is a threadbare discussion of locus standi and public interest litigation.

In *Bandhua Mukti Morcha vs Union of India* (AIR 1984 SC 802) the Supreme Court held that even if the workers are not bonded in the strict sense of the term as defined in the Bonded Labour System (Abolition) Act 1976, but are forced to provide labour or are consigned to a life of utter deprivation and degradation such situation can be regarded as one of bonded labour and it has to be remedied.

In the field of gender discrimination I will refer to one case which shows the Supreme Court’s deep concern for sexual harassment. “Convention on the Elimination of All forms of Discrimination Against Women” (CEDAW) was adopted by the UN General Assembly on 18<sup>th</sup> December 1979 and India ratified the Convention on 25<sup>th</sup> June 1993. “VISHAKA”, a non-governmental organization working for feminist causes, approached the Supreme Court of India with a grievance that there are no binding rules relating to sexual harassment of women in India. Is it not obligatory on the Government to enact a law on the subject? In the absence of such a law the Supreme Court said that it would make the law under Article 141 of the Constitution by providing guidelines which the Court did by its judgment in *Visaka vs State of Rajasthan* (AIR 1997 SC 3011)

Article 141 of the Constitution says that “the law declared by the Supreme Court shall be binding on all Courts within the territory of India”. It does not say that “law made by the Supreme Court” for the obvious reason that in the entire Constitution there is no mention

of the legislative competence of the Supreme Court which, however has by its own judgment invested itself with legislative power to be exercised when there is a vacuum.

There was a vacuum in the matter of sexual harassment. The Supreme Court resorted to CEDAW and gave directions practically on the lines of the provisions of that Convention and emphasized that “this would be treated as the law declared by this Court under Article 141 of the Constitution”. These directions thus constitute law applicable to cases of sexual harassment of working women in government and semi-government services.

The Union Government was supposed to make law on the subject — in fact the Attorney-General assured the Court that the Government would do it. Till today it has not been done; what is worse is that a study conducted by the National Commission for Women has disclosed that 60% of even the working women are not aware of this decision.

Some of the decisions are being briefly referred to though they are not strictly in the realm of human rights, but are in realm of fundamental rights. C.B. Mutthamma was the first lady in the Indian Foreign Service. She successfully challenged the service rule which required a lady member of the Service to obtain permission of the Government to marry (*C.B. Mutthamma vs Union of India* AIR 1979 SC 1868).

*In Neera Mathur vs L.L.C.* (AIR 1992 SC 392) the petitioner had been discharged from service during the probationary period on the ground that she had suppressed information about her pregnancy while filling the form at the time of her appointment. The Supreme Court held that this requirement of disclosure of private facts was humiliating and ordered its deletion.

I may now return to the third generation of human rights which have been read into Article 21 of the Constitution. Environmental questions have received a greater part of the attention of the Supreme Court. Holding that the failure of the authorities to control the pollution of the atmosphere results in the violation of the fundamental rights of the citizens under Article 21 of the Constitution, the Supreme Court has given a series of directions in several cases. *Vellore Citizens Welfare Forum vs Union of India* (AIR 1996 SC 2715) emphasized the need for taking appropriate steps for locating hazardous industries in a manner that would pose

the least risk or danger to the Community and for maximizing safety requirements in such industries.

In an earlier judgment (*M.C. Mehta vs Union of India* AIR 1987 sc 1086) dealing with hazardous chemicals, there are observations to the effect that life, public health and ecology have priority over unemployment and loss of source. M.C. Mehta is a lawyer by profession who has filed several petitions in the Supreme Court which has dealt with questions of wide range such as child labour cases, pollution by Calcutta tanneries, foundries of Agra, gas leakage, vehicular pollution, etc.

Some other matters dealt with by the Supreme Court may be briefly mentioned. The Constitutional validity of death sentence under Section 302 of IPC was upheld in 1980 but the mandatory death sentence under Section 303 of IPC was held in to be unconstitutional. Section 303 prescribes a mandatory death for a person undergoing life imprisonment committing murder.

A decision of the Bombay High Court holding that Section 309 (providing punishment for attempting to commit suicide) of the IPC was unconstitutional because that law was not just, reasonable and fair as it violated Article 21 of the Constitution, had been upheld by the Supreme Court. Unfortunately in a later judgment the Court overruled itself and restored the validity of that section on reasons which I find unsatisfactory.

Judicial activism of the Supreme Court is operating in several fields but I have dealt only with the one relating to human rights. In other fields there has been criticism that activism has degenerated into excessism or populism. It is feared that the Court might find itself in a 'chakra vyuha' from which it finds itself unable to find a way out. However the Court's decisions on human rights have not been criticized sharply.

England did not have statutory fundamental rights. Lord Seaman had been advocating the enactment of a law providing for fundamental rights. It was becoming increasingly necessary to have provision of human rights in law to bring U.K. on par with the European Convention of Human Rights. To fulfill this need U.K. has now the Human Rights Act 1998.

In India this need was met by the provision of fundamental rights in the Constitution and by the active judiciary evolving human rights jurisprudence. Besides we have National Human Rights Commission, a statutory body. The provisions of the act establishing

the Commission have no teeth - that is a criticism. However the recent action taken by NHRC in the matter of Gujarat riots has been commended by the human rights activists. Then we have other bodies such as the Minorities Commission and the Backward Classes Commission which act as watch dogs of the rights of the minorities and of the members of the backward classes. National Commission of Women is concerned with the interests of women. It should be also noted that several States have established States Human Rights Commissions and State Commissions of Women.

An account of the human rights situation in India would be incomplete without mentioning the important role played by social action groups or nongovernmental organizations which have fought for the causes at various levels - government, social and judicial.

## **Human Rights in Pakistan**

State of Human Rights in 2000 -A Report by Human Rights Commissions of Pakistan, Lahore, Price Rs. 200.

There is no official Human Rights Commission in Pakistan. Human Rights Commission of Pakistan is a non-governmental organization composed of committed fighters for liberties and human rights of the citizens in an atmosphere which can be at best described as hostile. Human Rights Commission of Pakistan (HRCP) has been functioning since 1987. It was set up by freedom loving people like the late Justice Dorab Patel, Asma Jahangir, I.A. Rehman - names familiar to people in India for their indefatigable championing of human rights especially of minorities, both in the courts and outside. The work of others in the HRCP, however, is no less important. The current chairperson is Afrasiab Khattak, while Hina Jilani is the Secretary- General. One must remember the unique contribution made by its late editor Aziz Siddiqui; one hardly ever comes across a more forthright writer than him.

Before proceeding to look at the HRCP report, State of Human Rights in 2000, we may mention briefly the nature of the work of HRCP. It consists of a general body of members which meets at least once a year and elects every three years the Executive Council. The Council in its turn elects its office-bearers - Chairperson, Vice-Chairpersons, Secretary-General and Treasurer. It is pertinent to note that no person holding office in the government or in a political party, at the national or provincial level, can be an office-bearer in the HRCP; a fact that ensures total independence from Government and political parties and a fact that also makes the availability of resources more difficult.

HRCP has, apart from its main office in Lahore, branch offices in Karachi, Peshawar and Quetta. Two Special Task Forces - one in Hyderabad and another in Multan - attend to specific urgent matters.

Since 1991 HRCP has been publishing an annual report of the human rights situation in Pakistan and till 1999 its editor was Aziz A. Siddiqui who gave all of his energies to the cause of human rights with unmatched devotion. Aziz A. Siddiqui passed away in June 2000 and the current report for the year 2000, edited by Komila Hyat, is dedicated to his memory.

The difficult task of such an organization in a field such as that of human rights in a country like Pakistan which has been under military rule for a longer period than under civilian rule cannot be underestimated. The editor points out that while HRCP's report for the year 2000 was being completed, Pakistan reached the end of the first year of its fourth period of military rule since Independence in 1947. The nineties saw Pakistan ruled by different governments and the country's return again into the arms of the military. General Pervez Musharraf took over the country's governance on 12th October 1999 and ever since the country has been under military rule, though Musharraf has not declared Martial law as General Zia-ul-Haq had done in the seventies.

The introduction to the Report says that "while the HRCP's annual report for the year 2000 was being completed, Pakistan reached the end of the first year of its fourth period of military rule since Independence barely fifty-three years"; Independence but no freedom for its citizens. The military rule covered the entire year for which the report under review has been prepared and unfortunately with General Musharraf installing himself as President recently, the end of military rule is not in sight. I mention this only for the purpose of expressing our solidarity for HRCP whose task has now been made more difficult and daunting. In short, human rights group and activists in Pakistan have been functioning under extremely difficult circumstances.

What struck me, as a lawyer, as remarkable in this report is not the mere enumeration of human rights violations in Pakistan. The report discusses the violations in the context of legal and social structure in the country. A non-Pakistani reader is acquainted with the legal, social and cultural background in which human rights violations take place. It must be noted that HRCP does not merely highlight the violations of human rights by the State and the State agencies. It discusses and analyses the societal violations of human rights in two ways. One, the society through positive action, with or without the State's connivance, violates the rights of individuals and two, the loss of freedoms that is caused by the prevalence of adverse social and economic conditions and which has been given an important place in the Report. I must also mention that to my (a lawyer's) delight, the report gives adequate information which is not directly connected with the human rights violations but which is useful in getting an overall picture of the country.

Pakistan is not a lawless country, as a good number of people outside Pakistan, especially in India seem to think. Pakistan has a Constitution which guarantees certain fundamental rights which, though, are more easily liable to be tampered with than in a proper democracy. However, in the year under review the State Assemblies and the National Assembly stood dissolved and thus there were no law-making institutions; so that all legislative measures during 2000 came in the form of Ordinances and there were 65 of them. Of these only 22 were new Ordinances and others were reissues of earlier Ordinances with amendments or revision (p.22).

Among the significant developments in the year 2000 mentioned in the Report are amendments of law to facilitate bargain pleas and amendment of Anti-Terrorism Act to restrict the security forces, freedom to fire upon their quarry. These developments were welcomed. Juvenile justice system in Pakistan had several shortcomings and changes have been made for the purpose of reinforcing the ban on capital punishment to minors, creation of juvenile courts of exclusive jurisdiction and respect for juvenile offenders' right to privacy and protection from malevolent adult company.

On the debit side there were two important developments - or rather non-developments. Musharraf's promise to revise the procedure in blasphemy cases to check the abuse of law could not be fulfilled because of the Mullas' stiff opposition. A proposal on the people's right to information in the form of a draft bill was released for public discussion "but the promise to enact it within a month apparently became a victim of forgetfulness" (p.23).

As is well-known, after Musharraf's coup the judges of the Supreme Court and the High Courts were required to take new oaths of office affirming loyalty to the new regime. Some judges did not do so but they were not sacked; they were treated as retired with full pensionary benefits (p.24). Some mercy!

In the Chapter on "Enforcement of Law", two subjects have been discussed - Law and Order and Jails and Prisoners. Law and Order situation in Pakistan has always remained explosive, thanks to the proliferation of arms in Pakistan society. Two million licenses had been issued in the Frontier Province alone. Sophisticated weapons could be delivered at one's doorsteps in any part of the country - for hire or purchase. The regime's determination to de-weaponise the society could not make much progress in 2000 (p.64).

Crimes against women included the so-called honour killings and among those killed were 41 minor girls. Women raped included minors, adults and the married. There were women victims of burning. These were societal violations of human rights, though in law they are classified as crimes. In law a human right is a right that can be enforced against the State and the State agencies and when the latter violate such rights, we characterize them as violations of human rights.

HRCP has interpreted human rights more liberally and has surveyed the human rights violations accordingly. As I have already mentioned earlier HRCP has concerned itself not merely with the human rights violations by the State and the State agencies but also societal violations. As a result statistically HRCP Report would contain more violations than would a report of a State (government) Commission which in any case does not exist in Pakistan (our National Human Rights Commission's annual reports which do not give any statistics about societal violations of human rights in India). Further, HRCP surveys the social and economic conditions (Chapter VI) which adversely affect the enjoyment of human rights.

The laws of blasphemy in Pakistan and its implementation have been the despair of those who emphasize freedom of religion. In an admittedly theocratic State (may not be technically but in actual practice) as Pakistan, the majorities who belong to the religion of the State apparently enjoy the freedom of religion. It must be said to the credit of HRCP that it has examined both the societal and State attacks on religious freedom of those who are or who are considered as non-Muslims. As early as in 1973 Ahmediyas (Qadianis) were declared by the then Bhutto government as a non-Muslim minority. They were by law prohibited from describing themselves as Muslims and from praying in Mosques and from describing their places of worship as Masjids. Persecution of minorities or of communities condemned as minorities does, no doubt, harm the members of that community but also impoverishes the society itself. Sir Mohammed Zafar-ullah Khan, a great jurist, politician and a great champion of Pakistan, had to live abroad most of his life as a Pakistani only to return to Lahore in his last days to die and to be buried in his beloved homeland. Professor Abdus Salam, the only Pakistani to win a Nobel Prize (in Physics) had to leave Pakistan and live abroad. He was a devout Muslim (but Qadiani) who never missed the Namaz and who was not allowed to offer Namaz in his house of worship. He died in exile in England.

HRCP also highlights the disabilities under which Christians and Hindus suffer in Pakistan (Chapter III).

I would regard Chapter IV, “Democratic Development”, as a unique contribution of HRCP to the literature on human rights. It is a small section of 12 pages but it reminds the readers of the Report and the people of Pakistan the valuable provisions in the Constitution of Pakistan which, alas, are honoured more in their breach. The discussion in this part of the report brings out the importance of political participation by the people and shows how denial of such participation helps the denial and destruction of rights. HRCP welcomes the principles behind the process of devolution and improvements in the electoral system, it questions the legitimacy of these being undertaken by a non-elected government (p. 168).

HRCP may be disadvantaged, being an NGO, but it has great advantages in two respects - it is not circumscribed by any restrictions of terms of reference or statute or rules and it is a team of dedicated activists committed to the cause of human freedoms.

## World Humanist Congress

The 14th World Humanist Congress was held for five days from 10th January, 1999 to 14th January, 1999 in Mumbai Maharashtra, India, with noticeable success. Such a Congress has been held for the first time in what has been described as a poor and under-developed country, Mumbai has been the host of some international humanist conferences in the past. But it was for the first time a humanist meet on a world scale has been held here, indeed in India

The organizers of the Congress faced innumerable problems, some of which cropped up from time to time during the preparation of the Congress. In the efforts to make the Congress a successful event, reliance had to be placed necessarily on local workers and organizations, though in the preparatory committee, several humanist organizations were represented. Help came locally, not merely from professional humanist organizations but also from individuals and groups, without 'humanist' nomenclature, engaged in humanistic work. It is not pretended that there were no shortcomings at all, but as they say, "man notices our failings, but God sees our strivings". Congratulations to the organizers of the 14th International Humanist and Ethical Union Congress, 1999.

The subjects for discussion, both in the plenary sessions and in the parallel sessions, were many and covered a broad spectrum. Considering that there were only three effective days, one could not naturally expect that there would be discussion in depth of the subjects - especially so because, there were three sessions every day. If the discussions drew the pointed attention of the delegates to the questions that should engage their attention in programmes for future action, it can be said that the Congress has substantially achieved its purpose. What was encouraging was the decision to have, at least in parallel sessions, discussion on what have been regarded as sensitive subjects like 'Fundamentalism and Islam', what was more gratifying was the fact that the delegates from Islamic countries, notably from Egypt, spoke candidly and told about the efforts being made in those countries for combating fundamentalism.

In this issue (of IRHA), the inaugural address of Dr. H. Narasimhaiah is being published; so also the address of Dr. Paul Kurtz. Some of the more important talks delivered at the Congress will be included in the ensuing issues.

In the plenary session on the last day, several resolutions were passed. The long term success of the Congress will be judged by the extent to which these resolutions will be implemented. In the last (January 1999) issue of this journal, the editorial discussed the significance of the World Humanist Congress being held in Mumbai. The thoughts expressed in the editorial also provide some standards for assessing the long-term success of the Congress. The IHEU should consider keeping in touch with its affiliated organizations with a view to assessing and furthering the progress being made in the humanist world pursuant to the labours of the just concluded Congress.

## U.N. Development Goals

In the year 2000, a historic Conference was held at U.N. Headquarters. It was historic inasmuch as the world's leaders came together and adopted what are known as the Millennium Development Goals (MDGs.). It was and is a set of eight developments of objectives which were as follows:

1. Eradication of extreme poverty and hunger;
2. Achieve universal primary education;
3. Promote gender equality and empower women;
4. Reduce child mortality;
5. Improve maternal health;
6. Combat HIV/AIDS, malaria and other diseases;
7. Ensure environmental sustainability; and
8. Develop a global partnership for development.

The project was ambitious, as is seen from the Millennium Development Goals Report, 1977. The objectives range from halving the poverty to halting the spread of HIV/AIDS. Providing universal free primary education is another goal. Though the world leaders adopted those goals at the Conference, the Governments concerned do not seem to have taken them seriously. It is advisable to have a look at the progress made, partly because 2007 marks the midway in the period. The goals were adopted in 2000 and were to be fulfilled by 2015. It was an unprecedented step taken by the Conference.

To mark the milestone midway of 2000-2015, the U.N. in India organised a programme called "Keep the Promise". The programme was intended to, among other things, draw attention to the fact that at halfway mark many countries are falling behind any where near achieving the goals.

African countries and in parts of Asia, extreme poverty is prevalent and seven years MDG has not made any perceptible difference. This is the first goal which has not been achieved. Universal primary education, which is the second goal, has remained as distant as ever. Children are made to work, thus denying them the opportunity to go to school. Primary education has to be universal; has to be free at least up to a particular level. Women are still treated unequally.

Even in a progressive country like India there is resistance to 30% reservation for women in the legislatures. Though some women have been occupying high offices, empowerment of women has not been achieved. This is the third goal.

Infant mortality and maternal health - in these fields some progress has been achieved. Large-scale HIV and AIDS are prevalent in Africa. Adequate and satisfactory steps are yet to be taken in this field. There is not sufficient awareness of environmental sustainability. In this respect, developed countries have been indifferent, if not guilty. Even the Kyoto guidelines have not been followed. A great country like the U.S.A., admittedly guilty of large-scale pollution, has refused to accept the Kyoto guidelines.

Global partnership, which is an omnibus programme, embraces in effect all other programmes, can be achieved by the fulfilment of other programmes.

All this is not to be too pessimistic. Dramatic progress has been made in some fields by some countries. Millennium Development Goals, 2007 has pointed out the progress made and shortfalls prevalent. Progress in improving child nutrition, the Report says, is still unacceptably slow. The progress in South and South Asia is particularly slow. The Report further points out that the world is lagging behind the goal of gender equality and empowerment inasmuch as large numbers of women are still shut out of jobs and receive poor health care.

On the health front, the Report shows, South Asia and Sub-Saharan Africa share the distinction of having the largest number of maternal deaths. There is not sufficient survey of the global and regional progress produced at the number of health attendants. The gains of women in politics were modest. It represents the most politics were modest. In South Asia, the share of women serving in legislature went from 6% in 1990 to 15% in 2007.

The Report is as authentic as it can be. It is a statutory survey of the global and regional progress produced at the request of the General Assembly. It represents the most comprehensive assessment of the progress towards the MDGs. The year 2007 being the middle of the period set for the MDGs, the Report has great significance.

## Geneva Conventions 1949

On 12th August 1949 four important Conventions incorporating international humanitarian laws were adopted in Geneva. Over 150 nations have signed the Conventions. Thus it is now the Golden Jubilee of the most important Geneva Conventions which are in fact the culmination of a series of developments begun more than 150 years ago.

No account of the Geneva Conventions can be complete without mentioning the history of The Red Cross Movement which was founded by Henry Dunant, a Swiss businessman in 1863. In 1859, the then thirty- one year old businessman happened to witness, with horror, the deaths of thousands of soldiers on the battlefield at Solferino in which combatants were the armies of France and Austria. More horrifying was the sight of thousands of wounded soldiers left by both sides unattended facing certain death. Dunant walked among the dead and the dying and came out with the idea that the injured can be saved if help was given. The battle at Solferino, in Italy, on that day, 24th June 1859, was no different from thousands of battles that had been fought earlier all over the world. But this was the first time a sensitive young man like Dunant witnessed the carnage and was determined to change things.

In 1862 Henry Dunant published his book “A Memory of Solferino”, in which he vividly described the scenes on the battlefield and called for action to help save the lives of the injured soldiers and to reduce their sufferings. Initially a committee of five all Swiss nationals (including Dunant himself) met to give support to Dunant’s ideas and subsequently at an international conference held on 23rd October 1863 and attended by representatives of sixteen European countries, the Red Cross Movement was formally launched. A red cross on a white background was adopted as the Symbol of the Movement. The Symbol was taken from the national flag of Switzerland without any idea of Christian association. However in view of the association of the Red Cross with Christian crusaders, it was not acceptable in Islamic countries which have adopted “Red Crescent’ as the symbol of the movement in their countries.

In the year 1864, a second conference was held in Geneva in which twelve European countries participated. An international agreement to be called Geneva Convention was signed. This was the first Geneva Convention which laid down ten rules (articles) for the treatment of the wounded on the battlefield based upon the plan

drawn up in the 1863 Conference. These were the laws of war - a concept which was so novel that it caused amusement in some circles. However the great humanitarian objects of the Convention came to be gradually appreciated and many countries became parties to the Convention.

The overseeing of the observance of the rules of the Geneva Convention was inevitably taken over by the Red Cross movement which adopted seven principles in the working - humanity, impartiality, neutrality, independence, voluntary service, unity and universality. The Geneva Convention of 1864 provided for the immunity from capture and from destruction of all establishments for the treatment of wounded soldiers, the impartial reception and treatment of all combatants, the protection of civilians rendering aid to the wounded and recognition of the Red Cross Symbol as a means of identifying persons and equipment covered by the agreement.

The Second Geneva Convention of 1906 revised and updated the first Convention. The protection of the Convention was extended to those wounded and shipwrecked as a result of naval warfare. In the meantime in 1901 the first Nobel Peace Prize was awarded to Henry Dunant.

The Hague Convention of 1907 introduced legal protection for prisoners of war. Taking up this subject after the First World War, the Third Geneva Convention of 1929 dealt with, in some details, the treatment of prisoners of war and provided that belligerents should treat prisoners humanely, information about the prisoners of war should be made available, and that visits by representatives of neutral states to prison camps should be permitted.

After the Second World War, it was thought necessary to revise and update the laws of war which are now called international humanitarian laws. On 12th August 1949, four Conventions were signed in Geneva and these form the bulk of the rules on the subject. These are the four Geneva Conventions under which International Committee of the Red Cross operates.

The first two of these Conventions provided for the amelioration of the condition of the wounded and sick in the armed forces in the field and at sea. They embody what is called the principle of neutralisation of the sick and wounded.

The third dealt with the subject of the treatment of prisoners of war and provided for their humane treatment, proper feeding and delivery of relief supplies. The fourth Convention restated some of

the principles of the earlier Conventions and specifically forbade some of the practices such as deportation of individuals or groups, the taking of hostages, torture, collective punishment and reprisals, the unjustified destruction of property, etc. Over 150 nations have signed these Conventions.

In the decades following the Second World War, several anti-colonial and insurrecting wars took place. They being not wars in international law, were not covered by the 1949 Conventions. After years of negotiations, an international conference sponsored by the Red Cross approved, on 8th June 1977, two protocols to the 1949 Conventions. These protocols seek to extend protection under the Geneva Conventions to guerilla combatants fighting wars for self-determination or civil wars in which combatants exercised control over significant areas. These protocols have not found acceptance by most of the signatories of the Geneva Conventions.

Human rights and international humanitarian laws are not the same, though they both attempt to uphold the dignity of the human beings and to alleviate their sufferings. Human rights are valid for all time. International humanitarian law is basically concerned with war situations and warlike situations. Humanism which is founded on the principle of respect for the human being can be said to be common to both human rights and humanitarianism.

## The Trial of M. N. Roy

It is too late in the day to discuss the trial of M.N. Roy. Radical Humanists know that Roy had left India when he was about 18 years of age. He traveled to America and then to Mexico; he founded the first Communist Party outside the USSR which had by then come into being. He learnt Spanish and wrote books and articles in Spanish. At the invitation from Lenin he traveled to Moscow and played an important role in the Communist International. Later he visited China. On 7th October, 1930, he founded Communist Party of India, but in Tashkent. CPI could not have been established in India because it would have been illegal. Later he was expelled from the Communist International. The vilification of Roy by the Communists continued as they were then, as till after the fall of USSR, acting on instructions from Moscow. These details, probably known to most of the Radicals, are being recounted to show that Roy, after leaving India in search of arms, never visited India till 1930. He could not have committed any illegal act or offence in India during that period. But the Penal Section of the Indian Penal Code is widely worded. Section 121, as it then stood, was as follows:-

*“Whoever wages war against the Government of India or attempts to wage such war or abets the waging of such war shall be punished with death or imprisonment for life and shall also be liable to fine.”*

Justice Davar rejected in *Tilak’s* case the view that there can be no offence against the Section unless the accused either counsels or suggests rebellion or forced resistance to the Government.

Some observations are in order. The offence of sedition did not mean that the person be made punishable for mere use of words, but when the words used are tantamount to disorder or disaffection.

Roy was outside India for 25 years. He could not be arrested. After the breach, in 1929, with the official Communists, he arrived in India with a stolen passport. He assumed the name of Dr. Mahamud, met several people clandestinely and even attended the Karachi Congress. During all this time the police were after him. He was ultimately found out on 21<sup>st</sup> July, 1931 and arrested on the basis of a warrant issued in 1924 when he was not in India. The Communists in India, of course, called Roy “renegade” and a man

who had diverted “Bolshevik Gold” to his own personal use. The Communists’ campaign of vilification of Roy knew no ends.

In 1924, the Kanpur Sessions Judge convicted, on charges similar to those against Roy, S.A. Dange, Muzzpar Ahmad, etc. The shrewd British authorities selected Kanpur as the venue of the trial where there was no jury system. The place also avoided demonstrations. The trial was not held as usual in the open Court but behind the walls of jail where Roy had been lodged. Mr. Rose-Alston was the Chief Counsel for the prosecution. Roy’s trial is called the Kanpur Conspiracy trial because the charges in the original trial, in which Dange and some others were convicted, was in Kanpur. It could not be held against Roy since he was outside India at that time. His trial was separated and was held when he was arrested in 1931. This was the first and the last trial of Roy.

Roy challenged the trial on several grounds, some of which were as follows:-

1. The trial was without jurisdiction;
2. The trial should be held in the regular open Court;
3. There should be trial by jury.

The challenge was rejected.

There was a long list of charges but basically it was that Roy had by communications from abroad instigated the people of India to deprive the King Emperor of his sovereignty of British India. In his Written Statement Roy argued that the British King had no sovereignty over India, but the statement was not allowed to be read, nor was it taken on record. Under Section 342 of the Criminal Procedure Code, an accused can explain the circumstances appearing against him. The Supreme Court has now held that the accused can explain even under a Written Statement. Roy’s aim was to tell the world that Britain had no legal sovereignty over India.

Ultimately, the Sessions case opened on 3<sup>rd</sup> November, 1931. Instead of the jury, there were four assessors. For obvious reasons, there could not be oral evidence. Evidence consisted entirely of letters written by Roy which were intercepted or obtained otherwise

from the recipients. Copies or photographed letters which were intercepted and re-posted and pamphlets and other publications which accompanied the letters also formed part of the evidence.

Two of the four assessors found Roy “not guilty”. The Sessions Judge, however, proceeded to hold him guilty to accord a sentence of twelve years’ rigorous imprisonment.

An appeal was preferred and it was heard by Justice Thomas. The Appellant’s Advocate was young and able K.N. Katju, assisted by D. Sanyal. Katju argued that the Court had no jurisdiction, no charges were probably framed, Roy had not properly been committed to the Court of Sessions, inadmissible evidence was relied upon etc. Katju argued on merits of the evidence that the accused should not be punished for what the Court regarded as extreme views, that the accused did not instigate revolt. It was also argued that law by itself does not prohibit a person from having extreme views and academically discussing them. In short, the accused has not acted in pursuance of his views.

The appellate Judge dismissed the appeal but mercifully reduced the sentence to six years. The appeal was decided on 2<sup>nd</sup> May, 1933. The Judge in his judgment held that –

*“With the knowledge that the Appellant considered that he could morally resort to force, it is impossible to put an innocent interpretation on his actions and to hold that he was engaged between the years 1921 and 1929 in peaceful, legitimate political propaganda”.*

A further appeal to the Privy Council was available. But Sir Stafford Cripps opined that it would be difficult to get any relief in the Privy Council. Cripps said an unfavourable verdict of the Privy Council would not only cause harm in the case but will also set an adverse precedent in England. It was unfortunately a tame opinion unworthy of a British Barrister. Roy was, however, of the opinion that so far as India was concerned, adverse decision could hardly alter the situation whereas a favourable one would be advantageous. In his opinion, “the extension of the possible evil to the British is a remote possibility, too remote to counterbalance the immediate advantages of a possible verdict”. Papers were handed over to other lawyers. Ultimately, the papers, including the certified copy of the High Court judgment, were lost and no appeal was filed. Six years’

imprisonment became permanent. Thus was closed the chapter which had started with the arrest and trial of Dange and others. Jawaharlal Nehru has said in his Autobiography:

*“I was attracted to him because of his remarkable intellectual capacity. I was attracted to him because he seemed such a lonely figure, deserted by everybody. The British Government was naturally after him; nationalist India was not interested in him; and those who were called Communists in India, condemned him as a traitor to the cause.”*

Roy was not allowed to read the Written Statement (referred earlier). Now was it taken on record. It was smuggled out of India and was published in Pondicherry, under the title of “My Defence”. It is a document of great erudition exposing the evils of British imperialism. For reasons of space, it cannot even be summarized here, but fortunately is included in Vol. III of *Select Writings of M.N. Roy* edited by Prof. Sib Narain Ray. I would strongly urge everyone to read the same. It will be great edification.

## Tolerance and United Nations

More than a year ago, Kofi Annan had appointed a Committee of 20 eminent people from different fields. Their task was to explore ways of addressing the increasing polarization between Muslim and Western countries. Please remember, the polarization referred to was between Muslim and Western countries and not between Muslim and Christian countries.

The reason was partly at least there are no Christian countries but there are Muslim countries. Many nations established as ordinary countries became Muslim nations as a result of conversion. Pakistan is the only country which was established as the Muslim State in the world and it remains so till today. Islamic Republic of Pakistan is the Constitution of Pakistan.

Though initially, at the time of Mujeebur Rehman, Bangla Desh was a secular State, later the country has been proclaimed an Islamic State. Whether a non-Muslim can ever become the head of the State is a doubtful point.

Till past year, Nepal was a Hindu Kingdom. There was only one Hindu Kingdom. In 2006 AD, due to mass upheaval, it has been declared a Secular Kingdom. How far it will be so is a questionable point.

Toward the South we have Sri Lanka, an avowedly Buddhist State. Except the Tamilians in the north, all in Sri Lanka are Buddhists, some of them even carrying arms. Buddhism in Sri Lanka is peculiar.

There is a group of Islamic islands called Lakshadeep to the south of India. Its population is hardly one million and pretends to be a State. Ninety per cent of the population is Hanfi Muslim. The State is divided into hundreds of islands which are a great tourist attraction. It is an Islamic State.

India, in theory and practice, is a secular State. All the provisions of the Constitution are meant for realizing the secular laws and State of the country. So much so that any law inconsistent with secularism is declared null and void by the Courts. See the following table:

Nepal	Hindu
Pakistan	Islamic

India	Wholly Secular
Bangla Desh	Islamic
Maldiv Icelands	Islamic
Sri Lanka	Buddhism

India is thus surrounded by theocratic States and thus faces a challenge of practising secularism effectively. India can, for example, confront any Muslim country in any international hostilities. That is a clever way Dr. Man Mohan Singh can think of isolating Musharaff from other Muslim countries. In spite of Organisation of Islamic Countries, Muslim countries are not united. So are the Arab countries of Arab League. And therein lies the safety of the country. You look at the Muslim countries. In spite of 50 years and bigger populations, Arab countries have not been able to throw out the Israelis. On the other hand, Israelis were allowed to establish camps on the western bank resulting in expansion of Israel countries.

All this was not covered by Kofi Annan's resolution. But peace depending on tolerance upon the different countries was a major task before them.

Countries are of different levels of culture, politics and civilizations. Yet, tolerance among them was possible. It has been suggested that these differences have been driving for among the nations. The bridges are to be built; friendships are to be forged. In all this, there is always a common thread. Each party understands or tries to understand other side's point of view. That is toleration.

Turkey is predominantly a Muslim country. After the abolition of Sultanate and caliphate by Kemal Pasha, Turkey is essentially a secular country. For some economic and other reasons Turkey wants to become a member of European Union. For this reason it abolished the death sentence. It has been its institutions and programmes to suit European countries.

Being a wholly (almost) Muslim country, the other Muslim countries should not resent this attitude of Turkey. Other Muslim countries can comfortably live with Turkey. There is nothing in Turkey's membership of European Union which is inconsistent or debilitating to other Muslim countries.

This is tolerance.

Some regard at present different civilizations in the world as an expression of tolerance on the part of the countries of all continents – Asia, Africa, Europe, America, etc.

Kofi Annan has pointed out one interesting fact. Bosphorous currents are notoriously strong, flowing one way on the surface, opposite way underneath the two continents – Europe and Asia. As one should see that Bosphorous currents are closely connecting rather than safely separating the two continents. Similar things – same things – could be said of Straits of Gibraltar, Suez Canal, etc. We are unnecessarily bothered about geography. In these days of globalization and European Union, geography must least count.

In recent times, a rich Arab Muslim has come into prominence. He has established a foundation called Al-Qaida, meaning The Law. The law is that the entire world must be Islamic. The bombing of the World Trade Centres and the serial bombings of Bombay trains are attributable to Osama's inspiration.

It is not necessary for us to give a judgment. It is true that Quran says Muhammad is the last prophet and Islam is the world religion. But it was 1500 years ago. It cannot be quoted today. Even Muslim countries are not united, let alone the whole world. Today in the world, there is no stronger country than the United States (U.S.). See Afghanistan and Iraq. No Muslim country has protested against the U.S. The largest Empire, the Ottoman Empire, next only to the British, was reduced by allied powers to one country.

Today Muslims live in Western countries. It is estimated that 30% of the people converted to Islam are Europeans. The faithful are thus living in different countries. There are certain problems, for example, in France. But these small problems are likely to vanish. Muslims can practice their faith wherever they are. Christians can do similarly. It is **the faith** and not the **faithful** that will decide the unity of the world. Addressing the conclusive meeting of the 20 persons appointed by him, Kofi Annan said:

Migration, integration, and technology have different races, cultures, and ethnicities bring closer together, breaking down old barriers and creating new realities.

The days of Osama and Saddam Hussain are over. The old Indian saying from Mahabharat is truer today than ever before: "*Vasudhaiva Kutumbakam*".

# **Universal Declaration of Human Rights**

The Universal Declaration of Human Rights (UDHR) was adopted by the Geneva Assembly of the United Nations 10<sup>th</sup> December, 1948 and so, on 10<sup>th</sup> December, 2008, it completes 60 years. There were no trumpets blown nor flags waved on the occasion. The day then passed almost unnoticed. It was in a sense a tame affair.

The world organization itself was in those days in its infancy. Originally it was thought that U.N. Charter itself should contain all the provisions of UDHR. The San Francisco Conference, which was held to draft the U.N. Charter, was given a proposal to incorporate the “Essential Rights of Man”. The proposal was not pursued because such a document required more discussion than was possible at that time. The U.N. Charter undoubtedly speaks “promotion of and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”. The idea of propounding a bill of rights was considered by many as implicit in the Charter, but it was obviously thought that human rights required more thoughtful discussion.

The Economic and Social Council (ECOSOC), also envisaged under the United Nations, was asked to establish a Commission for the promotion of human rights as mentioned in Article 68 of the U.N. Charter. In response to this request, ECOSOC established the Human Rights Commission in 1946. The very first session of the U.N. General Assembly, held in 1946 considered a draft Declaration of Human Rights and Freedoms and sent it to ECOSOC for reference to the proposed Commission on Human Rights in preparation of a document for the international bill of human rights. A preliminary draft was prepared and later it was taken over by a formal drafting committee consisting of members of the Commission from eight States.

Overcoming differences of the members of the Committee, the Committee ultimately prepared two documents. The one declared general principles defining human rights; the second document was in the form of convention containing human rights and their limitations. These were transmitted to the Commission which decided, late in 1947, to prepare “International Bill of Rights”. Only one draft was later prepared, taking note of the comments of various governments. The Commission did not have time to consider a covenant or the question of implementation. The declaration which

was prepared was submitted as it was, to the General Assembly through ECOSOC. The General Assembly, meeting in Paris, adopted what has now come to be known as Universal Declaration of Human Rights.

This was on 10<sup>th</sup> December, 1948. It was adopted by the votes of 48 States with none voting against. However, there were eight abstentions. Compared to the 192 countries which are members of the U.N. today, the number who voted in favour of “Universal” Declaration was very small, indeed. While considering this aspect it must be remembered that the number of independent countries which had become members of the United Nations by 1948 was very small as compared to today. This was partly because large number of countries were colonies; another number of countries (like India and Pakistan) had just become independent and were setting their houses in order. Even then the then President of the U.N. General Assembly pointed out that the adoption of the declaration was a remarkable achievement. He described it as a step forward in the great evolutionary process. No doubt, it was the first time, in the history of the world, that an organized community had made a Declaration of Human Rights and Freedoms. Please, however, it should be remembered that it was a declaration, not a treaty or covenant. No doubt, subsequently large number of countries have paid obeisance to it; no doubt, people all over the world turn and have turned to it for help, guidance and inspiration. No country or individual has expressed dissent.

UDHR is not to be regarded as common denominator. On the contrary, it proclaims a common standard of achievement and aspirations. The progressive and innovative tone of the Declaration is evident in many of its Articles. The countries which abstained from voting were the countries of the then Communist block, for obvious reason. Human Rights were anathema to Communist countries. Cold war had already set in.

Subsequent to 1948, Human Rights have not remained static. The horizon of Human Rights has kept expanding. It may be briefly mentioned that apart from political, social and economic rights, the Courts in several democratic countries have developed what can be regarded as environmental rights. Good and healthy environment is held to be necessary not for a particular individual but for the whole society of which that particular individual, along with others, is a part. Subsequent to 1948, also, several treaties and covenants have

come into existence and they have all taken UDHR into account. The rights in these treaties and covenants bear a marked relationship with UDHR.

The UDHR consists of a preamble and 30 Articles. It is a compact doctrine. It sets forth rights and freedoms to which all men and women, all over the world, are entitled to without discrimination on any ground. The Declaration is universal in the sense that the rights finding place therein are the rights of all human beings. They are rights of Indians as well as Britons. They are rights of Africans as well as Asiatics. No race or country is unfit for the rights as some political commentators have opined.

Article 1 lays down the philosophy on which the Declaration is based. It says:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

Implicit in this Article is a basic assumption that (1) the right to equality and liberty is man’s birth right and is not alienable; (2) that man being a rational and moral being is different from other creatures and, therefore, is entitled to rights which other creatures cannot legitimately claim.

Article 2 forbids “distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Thus, a Philippian is entitled to rights in the same sense in which an American is entitled.

Article 3 is a sort of cornerstone of the Declaration. It proclaims the right to life, liberty and security of a person – a right essential to the enjoyment of other rights. This Article is an introduction to Articles 4 to 21 in which other civil and political rights are set out. Article 22, the second cornerstone of the Declaration, introduces Articles 23 to 27 which deal with social and cultural rights which a member of society should enjoy. The Article characterizes these rights as indispensable for human dignity and free development of human personality.

The concluding Articles 28 to 30 recognize that everyone is entitled to a social and international order in which the freedoms set forth in the Declaration can be enjoyed. They also stress the duties and

responsibilities which an individual owes to the society. In particular, Article 30 warns that no State, group or person may claim any right, under the Declaration, “to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms” set forth in the Declaration. In other words, the individual not only has rights but also has duties.

The declaration has become “a common standard of achievement” for all peoples and all nations. It is a yardstick or benchmark to measure the degree of respect for, and compliance with, international human rights standards. Since 1948, the Declaration rightly continues to be an important and far-reaching of all U.N. declarations. It is a fundamental source of inspiration for national and international efforts to promote and protect human rights. It has set the direction for all subsequent work for U.N. agencies. The basic philosophy of the Declaration pervades the work of U.N.

An international conference was held in Tehran in 1968 which, in its proclamation, agreed that “the Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the unalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community”. The conference called upon all the peoples and Governments “to dedicate themselves to those principles and redouble their efforts to provide for all human beings a life consistent with freedom and dignity and conducive to physical, mental, social and spiritual welfare.”

Considering the political atmosphere of its time (1948) in the wake of the Second World War, UDHR was a revolutionary document. It must be said to the credit of the statesmen of that age that they thought of human rights which even today sound fresh. The presumption of innocence, education, freedom of movement, marriage by consent, and political asylum are some of the rights mentioned in the UDHR which remains the foundation of several later declarations and covenants.

## **Peter Benenson and Amnesty International**

Archana Guha, a young Bengali lady teacher, was arrested in 1974 and was subjected to third degree torture by the Calcutta Police on the suspicion that she and her relatives were Naxalites. This resulted in her suffering paralysis. In 1976, she was released after nearly three years of detention without trial. In 1979, when an Amnesty International team visiting India came to know about Archana's case, and the details of her illegal detention and misfortune, were published, later in 1980. Amnesty's Danish Medical team took her to Denmark. After intensive treatment in Denmark, Archana was able to move and return to India.

This was only one of the thousands of cases handled by Amnesty International. But what is this organisation with the unusual name? After all, amnesty means a sovereign act of a government by which prisoners are pardoned for their past acts resulting in their release and obliteration of their criminal record. Normally, amnesty is given for political offences. Amnesty International is not a government. It is a non-government organisation and behind its birth and development, lies a long and interesting story of one individual who made it possible.

That individual is Peter Benenson. The Benenson family was of Russian-Jewish background. Benensons migrated from Russia to England in 1917 after the Revolution. It was a well-to-do family. Peter's grandfather, Girgori Benenson, was a banker and oil tycoon and inevitably a multimillionaire in Tsarist Russia.

Peter was born on 31<sup>st</sup> July 1921 in London of Harold and Flora. The parental influence on Peter came mostly from his mother, Harold having died when Peter was only nine years old. Flora was a dynamic personality, a warm hearted lady with a good measure of idealism - these qualities Peter also cultivated. Peter had good education. Before going to Eton, W. H. Auden, the poet of liberty, was his private tutor. He later studied history at the Oxford University.

Spanish civil war started in July 1936 and lasted till 1939 when Franco established his domination over the whole country. Several volunteers from different countries went to Spain to fight on the side of the Republican forces, Peter, still in school, organised a school

committee to help the Spanish Relief Committee. He read and was greatly influenced by Arthur Koestler's *Spanish Testament*, which described the trials and tribulations of the Republicans.

Around this time, Hitler's persecution of Jews was gaining momentum. Peter started a campaign of raising funds for helping German Jews to escape from Germany and to come to England. Government was allowing only those Jews to come who had, in modern diction, sponsorship that is a guarantee that the immigrants would be taken care of by British nationals.

In September 1939, the Second World War started. Peter's offer to join the Royal Navy was turned down because his mother was of Russian origin. At that time, Russia was not on the side of the Allies; it was in fact tied down by the Non-Aggression Pact with Germany. Later, in 1940, Peter joined the Army but worked only in non-combatant posts.

After his discharge from the Military, he qualified himself for a career in law and later he joined the British Labour Party. Spain came into his life again. Franco's regime had become firmly established and prosecutions of trade unionists were going on in farcical trials. Peter Benenson went to Spain, at the instance of the British Trade Union Congress, but had not much success in helping the prosecuted.

### **Trip to Spain**

Peter made another trip to Spain to help political prisoners. He witnessed one farcical trial and made note of irregularities and illegalities. Later that night, he went to the trial judge and enumerated his complaints. Surprisingly, the judge was convinced and the next day, he acquitted the accused - a phenomenon unheard of in Franco's Spain. Political prisoners were acquitted!

The year 1956 witnessed two events which tested the fact and resourcefulness of Peter. Lawyer members of the Labour Party had formed Society of Labour Lawyers. Similar groups from Conservative and Liberal Parties had been formed. In 1956, several opponents of the racist regime in South Africa were accused of treason and were put on trial. In Hungary, an uprising against the Communist regime had been brutally suppressed by Russian soldiers. The Leftists wanted to help the South Africans while right wingers wanted to extend support to the Hungarian patriots Peter

Benenson was able to persuade the three groups to sink their differences and to send observers to both the countries. He went to South Africa. A new independence group called Justice' with Sir Hartley Showcross as the Chairman was formed. Later "Justice" became the British branch of the International Commission of Jurists which is still active.

In November 1960, a news item in the *Daily Telegraph*, triggered the idea that ultimately gave birth to "Amnesty International". That news was that two students in a Lisbon Café stood up and proposed a toast to Liberty. In another country, it would be regarded as an innocuous affair but not in Salazaar's Portugal. The two students were arrested and sentenced to imprisonment for seven years. This news motivated Peter to work for the release of political prisoners.

Peter Benenson gathered his friends and decided to work for the release of political prisoners. A campaign was to be launched and it was titled: "Appeal for Amnesty, 1961" Under Benenson's persuasion, *The Observer* of London carried a lead article "Forgotten Prisoners" on Sunday, the 28<sup>th</sup> May 1961. That article was written by Benenson himself and drew the attention of the public to the fact that on both sides of the Iron Curtain, there were hundreds who were imprisoned only because their views on religion or politics did not coincide with those of their governments.

### **Light a Candle**

These prisoners were called "Prisoners of Conscience", a phrase coined by Eric Baker, a non-lawyer colleague of Benenson, who later took over the leadership of Amnesty International. There is a Chinese proverb: "It is better to light a candle than to curse the darkness". From this, the logo of the campaign took shape - a picture of a face or a pair of hands behind a barbed wire. The Amnesty's campaign laid down two important principles which have guided it and which have been adhered to later by Amnesty International. One, Amnesty would not help those who preach or practice violence in pursuit of their goals. It was for this reason Amnesty refused to take up the case of Nelson Mandela who had refused to renounce the use of violence. Secondly, Amnesty would be strictly neutral in political matters.

### **AI Born**

The campaign was found to be not enough. A permanent organisation was needed. Groups had been formed in different

countries to further the case of Amnesty. At a conference of these groups in 1962, a decision was taken to establish a permanent organisation. Thus was born Amnesty International.

In course of time, Amnesty spread its branches in 150 countries with an estimated membership of over 700,000. Though the Amnesty International groups were all voluntary, the work was done by them with professional efficiency. In order to help them in this work, Amnesty International set up an information centre in London and also organised a research department. Every case that is taken up by Amnesty International is thoroughly researched and examined. What false crimes was the prisoner accused of? Why he is in prison? How long? In what conditions? How can Amnesty help? These and other relevant questions were studied in depth.

Accurate information was basic to the success of Amnesty's work. This was necessary for the credibility of the organisation. The mode of operation of Amnesty ensures that the bias element is eliminated. In every country, two or three groups are formed. Each group is assigned the cases of other countries. Indian groups will not handle cases of prisoners in India, though they may collect information and transmit it to London.

Various methods are adopted by the Amnesty in its campaign - bombarding the authorities with letters, demonstrations, telegrams, and meetings with the authorities, wide and constant publicity. Amnesty has succeeded in creating an awareness of the need for protecting civic rights. It has built up a strong case against torture so much so that the United Nations itself has issued guidelines for freedom from torture.

In 1977, Amnesty International was awarded the Nobel Peace Prize. In 1978, it was awarded the UN Human Rights Prize. In Stockholm itself, Amnesty had, in 1977, a conference on the abolition of death penalty which was called by Albert Camus as 'the most premeditated of murders'. Amnesty called it "the ultimate cruel, inhuman and degrading punishment". It has campaigned incessantly for its abolition throughout the world. In individual cases, appeals for clemency have met with some success.

### **Tread of the Torturer**

The work of the organisation never ceases. Jonathan Power, a historian of the movement, has described the task before the movement in the following words:

*”For every carnival, there are a hundred nights in the desert; for every release another batch of prisoners; for every family reunited, another torn asunder; for every shout of exultation, a cry of suffering; as the heavy door shuts out the daylight for one more prisoner leaving him to nurse his own wounds and wait, when the morning arrives, for the tread of the official torturer or the executioner”.*

## **Justice R.A. Jahagirdar (Retd)**

*Justice RAJahagirdar (Retd) studied economics and politics for his graduation and post graduation. During his college days he took part in dramas, debates, and elocution and Students ' Union activities. He studied Law while in employment and passed Law examinations meritoriously in 1959. Having passed the I.A.S. examination, he chose not to join the Civil Service. He served as Government Pleader, Professor of Labour Law in K.C. College and in the University of Bombay.*

*In 1976 he was appointed Judge in the Bombay High Court and retired from there in 1990. After retirement he was appointed Chairman of Monopolies and Restrictive Trade Practices Commission but did not continue for long for personal reasons. He was also Chairman of the Committee for Fixing the Fee of Higher Education in Maharashtra.*

*In addition to his qualifications in Economics and Law, Justice Jahagirdar is a student of Philosophy, History and Religion. A voracious reader, Jahagirdar is fond of Will Durant and his wife Ariel, the famous philosopher-historian couple and quotes them often. His personal library, containing all the volumes of "The History of Civilization" written by this couple, is huge. Recently he has donated all his books toAcademy of Political and Social Studies and SM Joshi Foundation Library, in Pune.*

*He is connected with free thoughtmovement and organisations and has spoken and written extensively on rationalism and secularism. He had been the Chairman of Indian Rationalist Association, President of Maharashtra RationalistAssociation and Editor of "The Radical Humanist". As a Founder-Trustee of the Rationalist Foundation he has contributed Rs. 5 lakhs towards its corpus.*

*Dr. (Mrs.) Sharad Jahagirdar, daughter of Late Justice P.B. Gajendragadakar (whom Mharashtrians know very well), is a well known and an extremely successful gynecologist. Together, Dr. Sharad and Justice Jahagirdar have very generously donated to the cause of Rationalism, Secularism, Humanism, Social Justice and Freedom of Expression.*



**Rationalist Foundation**