

HUMANTATWA- A PARADIGM SHIFT FROM HUMAN RIGHTS TO HUMAN DUTIES

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Abstracts:

We as humans dream to live in a utopian nation with equity principles as the base but fail to even acknowledge the obligations we are born with. Any incident for that matter, be a dog bite, shall be enough to start a whole new parade for human rights violation. It is very essential that the rule of last antecedent is applied before we start interpretation of our human rights. In the middle of the fight of superior rights, the existence of duties has been negligible. This paper shall try to put forth the picture, where, in the hunger of our rights, we as a nation have never paid heed to our duties, causing the root reason of our stagnancy.

Abstracts: *Humantwa, Human, Rights, Duties, Principles*

The word TATWA in Sanskrit means the core essence. Prefixing the word human to it emphasizes more on the virtue of being a human, which brings, onto a quote by a wise man-

"There is only one basic human right, the right to do as damn you may please, and with it comes the only basic duty, the duty to take up the consequences."

This article entitled ‘human-tatwa’ is an attempt to stretch our conscious focus from ‘the rights’ to ‘the duties’- with a much wider approach to achieve the former in a more sheer form. *‘I have the right to come home and have some peace’* – said the husband. The wife replied- *‘I have the right to tell how I feel’*. A very familiar squabble we shall find in almost every house. This argument ends up with an endless debate on ‘mine’ and ‘your’ rights¹

In its analytical perspective, “right” has two parts (form and function). One is the internal structure of right (their form); and the other is what rights do for those who hold them (function). Accordingly, right is a combination of claim and duty. This means a right confers certain liberties or privileges and imposes duties upon individuals to exercise while claiming their rights. A number of jurists define the concept of exercise of rights with duty as positive and negative rights. Accordingly, the person who is entitled of positive rights shall be the claimant of some goods or services. A holder of negative right is entitled to non-interference. In the eyes of law, Right confers on a person certain amount of liberties and privileges. At the same time impose obligations to discharge.²

Liberation of a society by granting rights without taking up the due cognizance has ever since always failed. Starting from Louis XIV of France, absolute czars in Russia to Nazis in Germany, Mussolini in Italy, the

¹ <http://www.humanrightsdefence.org/index.php/articles-sp-724795164/370-enlarging-the-scope-of-democracy-by-changing-our-interpretation-of-human-rights.html> accessed on 9/10/2015

² http://www.unipune.ac.in/pdf_files/Final%20Book_03042012.pdf accessed on 15/10/2015



world has seen it all.³ Although in today's world we do not have absolute monarchy, but it is essential to see that we should not end up just by declaring or assigning rights to individuals, groups and having a mere enforcing body to support it.

1. Rights- an overview

In the time line of evolution of the concept of grant of rights, to provide better nourishment to the humans, irrespective of their citizenship, there has been several efforts to enforce the basic rights and has also succeeded to a considerable extent. Rights from being authoritative and hierarchical, to divine rights of the king, to the modern concept of being liberalized, to the revolutions - that has brought in storm of changes in the concept.

In the contemporary concept of rights, the inception can be told as the formation UNITED DECLARATION OF HUMAN RIGHTS (UDHR) during the 20th century which had set standards for individuals, groups, governments to maintain the behavior towards each other, which was followed by the international covenant on civil and political rights and international covenant on economic social and cultural rights. India has been a signatory to the United declaration of human rights and has followed up by setting up a national board known as NATIONAL HUMAN RIGHTS COMMISSION(NHRC).

So when the nation already has propounded so much when it comes to establishing the rights, then one could probably expect huge uplifting change of the genus atleast in regard to the basic rights, but the reality picture seems to be far from this vision. *People's watch*-a magazine on human -their rights and violation, had recently published '*From Home to Despair*' which is a balance sheet of the work is done by the National

Human Rights Commission. They have come to the conclusion that the National Human Rights Commission has not been effective to tackle the human right violation. Of all the complaints the commission has not replied to 1/3rd of the complaints. The acknowledgment for the receipt of the complaint and progress in the case has not been informed to the complainant. It is inhuman not to inform about the progress for two to three years to the complainant. The disappointing reality is that the people working in the Human Rights Commission are waiting for the death of the complainant who is waiting for a response. Those who receive a reply from the Commission cannot understand the order passed by the Commission because these replies are short. There is necessity to train the members of the Human Rights Commission to send reply in a language, which can be understood by the people.⁴

The social welfare nature of the state that we have has the positive duties to provide welfare to the individuals , it is here where the bill of rights came into play emphasizing on civil political rights. It is the responsibility of people to awaken and bring some constructive changes in the sleeping Human Rights Commission because such machinery is an insult to the citizen's human rights.

The skeleton of any right has the soul of being liberalized. As the famous quote by Jhon Dalbough Acton goes, '*liberty is not the power of doing what we like, but right of being able to do what we ought*'. Since recognition of the rights has been already established, it is important that there is recognition of positive duties that is important while re shaping the fundamentals of the welfare state we dwell in. The state's responsibility is no longer conceived as the sole unconditional provider of package of benefits, but instead it is in terms of

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<https://en.wikipedia.org/w/index.php?title=Human&action=history> accessed on 9/10/2015

⁴ <https://humanrightsindia.wordpress.com/2008/02/21/the-hard-facts-of-the-bad-functioning-of-the-human-rights-commissions-in-india/> accessed on 15/10/2015



empowering the individuals. The right bearer is characterized as an active agent instead of being a passive recipient.⁵ It is essential that there should be interrelation between positive duties within the sphere of human rights and welfare state.

Every freedom or rights is to be fed by the competency of the seeker. A simple example would be- the not privileged in the society has the right to be given the basics of the life, the vulnerable of the society have the liberty to claim security to their vulnerability. The social welfare state on the other hand needs to have enough resources to allocate this necessities. Thus as Mr. Sen demonstrates "*countries with accountable leadership do not suffer famines because leaders know if they are to remain in power, they must take action to protect the population.*" Moreover he argues, "*political rights, including freedom of expression and discussion, are not only pivotal in including political responses to economic needs, they are also central to conceptualization of the needs themselves*".⁶

Every recognition to a right also acknowledges the necessary obligation along with it. However these obligations unlike the rights have been divided into categories like the primary secondary and tertiary. This also involves positive duties to provide and negative duties to restrain. This kind of model is what we have in our constitution under part IV- directive principles of state policy but again these are not judicially enforceable.

2. Jurisprudential views

The Jurisprudential aspect has a rather expansive form of this concept. Talking about the rights and duties, the core fundamental concept was broadly put forward by Hohfeld's Jural co relations matrix. The whole concept could be summarized as one who is in a capacity to claim rights has a co relative duty attached. However Hohfeld identified each kind of right (claim liberty authority and immunity). Therefore claim rights has co relative duties, liberty rights co relate with absence of claims, authority rights co relate with liabilities, immunities correlate with absence of authority. The same could be applies onto moral rights.⁷

In the words of Paton 'An obligation is that part of law which creates rights in personam'. Since the central point is to justify human rights, it's very important to keep in mind that the concept of human rights as not been derived out of thin air, but it is a byproduct of the society we as humans have been dwelling in. Prof. H.L.A. Hart divided the system of law into two kinds of rules- viz:

1. Primary 2. Secondary.

The reason that he gave was that, these regulate the conduct of the member of the society and that they are derived from human practices. When these rules are magnetized with societal practices then, the sociological domain is infused within. According to a dimension of analytical positivism- these primary rules consist of duties which are binding in nature. And then the secondary rules come into their actual play which confer powers to the individuals.

⁵P Jones, universal principles and particular claims: from welfare rights to welfare states"(sage London 1990)

⁶ Sandra Fredman "human rights transformed : positive duties and positive Rights" www.ssrn.com/link/oford-legal-studies.html accessed on 15/10/2015

Another jurist of early 20th century had a more precise explanation of the concept of

⁷ ibid



human obligation. Leon Duguit in his theory of 'social solidarity'. This theory defines the human relation as interdependent. As no man can ever be self sufficient solely depending on thyself. Therefore A society provides us the support system, in return of which every individual has certain indispensable duties to be fulfilled. Failure of which, rights of the human shall be grossly violated. To quote him 'Justice as a social reality has its root in the society itself and not in the will of the sovereign'.

The conclusion would be that at the very outset to secure right, the obligation corresponding needs recognition. It is also necessary to formulate a non doctrinal method that could give quantitative results; such that any discrepancy could be sorted. Human right in its holistic form and approach essentially involves incorporation of THE DUTIES.

3. Duties- magnified

Human rights have ever since been recognized has been into one of its expanding horizon. This makes its difficult to prioritize human rights and understanding its approach. Then how do we ensure that the rights in favor of humans are protected. Metastudy in one of its researches have concluded that in order to know the rate of growth of the subject , the indicators of the subject should be closely studied. They reveal out the actual loopholes in the graphs, for example to know the probability of production both demand and supply serve as indicators .

Possibly one of the indicators in case of human rights could be 'Duties'. Duties arise in several ways and means, such as moral duties, legal duties, parental duties, societal duties, and civil duties etc. Here is an example- the citizens have the beautiful right to enjoy in amusement parks in the city, the state has the responsibility to provide the same. This does not stop here. The citizens

have the utmost duty and obligation to not to destroy or litter anything in the park.

One of the housing society in Oslo, Norway (which also lists in the top 10 clean cities in world) devised a unique way to ensure that every family in that society received the necessities. They made a booklet mentioning about the amenities like water, maintenance, garbage, noise, etc and circulated to all. They were directed that every time any of these duties failed, they had to put up a red sticker on that column for one month. By the end of the month that had statistics as to where was the failure. Well this could be applied to almost all material failures.⁸

Mere existence of human rights commissions is not adequate. Human rights programmes needs to be devised and it needs to be ensured that theses programmes form a integral part of the educational curriculum. This is extremely important, to sensitize the society at large from a young age to resent and resist human rights violation. The awareness regarding human duties ought to create a new ray of hope for all.

In India, although the law is dynamic in nature but right now its important that the duties shall be in par with the rights. The irony is, fundamental duties are not enforceable as the rights are. This duties are not only in regard to the government but for one individual to another. High time that we make this duties judicially enforceable and along with it penalize the violation of any. In such a situation where one has a right and has also complied the corresponding duty still is being deprived of justice, judiciary shall interpret laws for the best purpose fit.

On International level, the draft 'bill of duties' should be notably taken into contemplation . A body similar to UDHR known as the UNITED DECLARATION OF HUMAN DUTIES AND RESPONSIBILITIES(UDHD) had been

⁸DR. M.H. khandagle, Dialectics and dynamism of human rights(2011) p.90, Asia law house



proposed in Valencia Declaration in 1998. However there has not been any further progress in this respect. The countries ratified for UDHR should come forward willingly to get this into action. This could be started from and by us as Indians forming a National body as “national human duties commission” which shall regulate all of the important aspects and most importantly shall regulate transparency.

- To pay the taxes established by law for public purposes.
- To Protect the property and culture of the state.
- Not to discriminate or advocate anything on communal, linguistic and religious

Or any other ground that affect the liberty of other individuals

- To respect the rights and responsibilities of others.
- Not to make false allegations or complaints against others.
- Not to misuse the laws and regulations

There are innumerable duties that an individual has towards state and the society. But so were the rights when the country started with its constitution, Now we have an non exhaustive clause to the lists of rights. The above stated duties few are only illustrative in nature. The strict adherence of the duties prescribed by each state and society contributes for the sustainable development. In the modern context, many people think of their rights without acknowledging that they have a duty to protect the rights of others. This degradation of duty perspective has brought in a number of upheavals in the contemporary area. If people are duty conscious, automatically the country and its institutions also follow the duties without any deviance. The sincere practice of duties and exercise of rights

certainly will create a society or state that is equitable in its pure form.⁹

4. CONCLUSION

In the light of the above discussions it could be said that the concept of human duties is in a nascent stage in India. Existing laws put emphasis on protection of human rights but its relatively more important that we start giving importance to duties. Its urgent to start progressing in this direction for wholesome growth.

Firstly campaigns regarding awareness of duties needs to be started.

Secondly education system should be given much importance to the human duties serving's human rights

Thirdly a body should be formed for enforcement and supervision of the human duties.

⁹ supra .2