C.L. RAMAKRISHNAN

PRESENTS
HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE
HISTORICAL DEVELOPMENT

1215 AD   Magna Carta
1640 AD   Habeas Corpus Act
1776 AD   American Declaration of Independence
1789 AD   French Revolution
1815 AD   Congress of Vienna
1919 League of Nations
1945 UN (Organization)
10-12-1948 Universal Declaration of Human Rights by UN General Assembly
26-11-1949 Parts III and IV of the Indian Constitution, laying down the fundamental rights and the directive principles of state policy.

✓ Part III encompasses the traditional civil and political rights and
✓ Part IV consists of the new economic and social rights.
At the time the UN Gen. Assembly resolution was passed, contemporaneous drafting of our Constitution was on and this concept was adopted –

The Result was parts III & IV - Special Reference to Art. 21
Definition of human rights –
birthright of human beings

definition of human being –
man, woman, child
Art. 39 of Magna Carta says: “No free man shall be taken or imprisoned or outlawed or banished or in any way destroyed nor will we go upon him, nor send upon him, except by legal judgment of his peers or the by the law of the land. A few decades earlier the Habeas Corpus Act of 1640 and 1679 had attempted to provide legal remedies against arbitrary retention and imprisonment”
UN Declaration of HR dt. 10-12-48

“Disregard and contempt of human rights have resulted in barbarous acts which have outraged the conscience of the mankind, and advent of the world in which human rights shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspirations of the common people”.
India signatory to these declarations in 1948 and now bound by parts III and IV of the constitution.
CRIMINAL JUSTICE ADMINISTRATION SYSTEM (CJS) HAS THREE BRANCHES:

- INVESTIGATION AND PROSECUTION (POLICE AND OTHER ENFORCEMENT AGENCIES)
- ENQUIRIES FOR TRIAL (LAW COURTS)
- CORRECTIONAL ADMINISTRATION (PRISONS, PROBATION, PAROLE ETC)
AS FAR AS INDIA IS CONCERNED HUMAN RIGHTS COULD BE SAID TO BE THE PROVISIONS IN PARTS III AND IV OF THE CONSTITUTION ENUMERATING THE FUNDAMENTAL RIGHTS AND THE DIRECTIVE PRINCIPLES OF STATE POLICY.
PART III IS SAID TO BE THE “HEART OF THE CONSTITUTION”.

IF SO, ARTICLE 21 IS THE “HEART OF THE HEARTS”. THIS ARTICLE READS AS FOLLOWS:

“No person shall be deprived of his life or personal liberty except according to procedure established by law”
IN ADDITION THERE IS THE SPECIFIC CENTRAL LEGISLATION “THE PROTECTION OF HUMAN RIGHTS ACT 1993” WHICH DEFINES THE TERM “HUMAN RIGHTS” – SECTION 2(d) ibid – AS

Human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.
The essence of the right is that law has to be enforced as it is and not as the enforcer feels it should be - reason is administration consists of the three arms of legislation, execution and adjudication - execution therefore, to be in line with the purpose and intent of legislation
Example: A person sentenced to imprisonment still retains all his rights except being confined to the precincts of the prison, unlike the impugned “Hands Off” doctrine laying down the rule that such a person, for the time being, is a slave of the state (Ruffian Vs. Commonwealth - English judgment).
SUPREME COURT IN MENAKA GANDHI’S CASE (AIR 1978 SC 597) OBSERVED:

“IT WILL BE LEGITIMATE FOR THE COURTS TO REFER TO THE PROVISIONS OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS IN CONSTRUING THE INTENT AND SCOPE OF PART III OF THE CONSTITUTION.”

SUPREME COURT DEDUCED UN-ENUMERATED FUNDAMENTAL RIGHTS LIKE “RIGHT TO LIVE WITH HUMAN DIGNITY”.

SUPREME COURT PROPOUNDED THE THEORY OF "EMANATION" (IN MENAKA GANDHI’S CASE QUOTED ABOVE) - TO MAKE THE EXISTENCE OF THE MAIN FUNDAMENTAL RIGHT MEANINGFUL AND ACTIVE.
THE FOLLOWING FUNDAMENTAL RIGHTS HAVE BEEN EVOLVED AS EMANATING FROM THOSE ENUMERATED IN PART III

1. RIGHT TO PRIVACY – ARTICLES 19(1) AND 21 (GOVIND Vs STATE OF MP AIR 1981 S.C. 1978)

3. RIGHT TO TRAVEL ABROAD ART. 21 MANEKA GANDHI’S CASE


8. RIGHT TO SPEEDY TRIAL – Art. 21- HUSSAINARA’S CASE, A.I.R 1979, S.C. 1350
9. RIGHT TO FREE LEGAL AID – ART. 21
(HOSCOT’S CASE A.I.R. 1978, S.C. 1548,
HUSSAINARA’S CASE MENTIONED ABOVE,

10. RIGHT AGAINST DELAYED EXECUTION –
VAITHEESWARAN’S CASE 1983 (2),
S.C.C. 68

11. RIGHT AGAINST CUSTODIAL VIOLENCE
– ART. 14,19 & 21 JOGINDER KUMAR’S
CASE A.I.R 1994 S.C. 1349 AND D.K. BASU’S
CASE 1996(1), CRIMES 223
12. RIGHT TO SHELTER – Art. 14,19 & 21 – SHANTISTAR’S CASE 1990 (1) 520

13. RIGHT TO DOCTOR’S ASSISTANCE – Art. 14,19 & 21 PARAMANAND’S CASE 1989 (4) 286, P.B. KHET MAZDOOR SAMITY Vs STATE OF W.B.

14. RIGHT TO HEALTH – Art. 14,19 & 21 VINCENT Vs. UNION OF INDIA 1987 (2), 165
15. RIGHT TO POLLUTION FREE ENVIRONMENT - Art. 14, 19 & 21 MEHTA Vs UNION OF INDIA 1987 (4) S.C.C. 463

16. RIGHT TO EDUCATION FOR CHILDREN UNTIL 14 YEARS OF AGE – Art. 45, UNNIKRISHNAN’S CASE 1993 (1), S.C.C. 645

17. RIGHT OF THE CHILD LABOURER TO REHABILITATION AND EDUCATION - Art. 21 & 45 M.C. MEHTA Vs STATE OF TAMILNADU, W.P.No: 465 OF 1986

20. RIGHT TO LIFE – RIGHT TO HEALTH, MEDICAL AID TO PROTECT THE HEALTH AND VIGOUR OF A WORKER WHILE IN SERVICE OR POST-RETIREMENT IS A FUNDAMENTAL RIGHT UNDER Art. 21, READ WITH Art. 39 (e), 41, 43, 48A AND ALL RELATED TO ARTICLES AND FUNDAMENTAL HUMAN RIGHTS TO MAKE THE LIFE OF THE WORKMEN MEANINGFUL AND PURPOSEFUL WITH DIGNITY OF PERSON – C.E. & R.C. Vs UNION OF INDIA (A.I.R 1995 S.C. 922)

HUMAN RIGHT VIOLATIONS
OVERCROWDING IN PRISON – UNJUSTIFIED ARRESTS

DELAY IN DISPOSAL OF CASES, BOTH AT THE INVESTIGATING AND TRIAL STAGE,

NOT BEING LIBERAL IN RELEASE OF ACCUSED ON BAIL, ON PAROLE ETC
LAPSES IN PRODUCING UNDERTRIALS IN COURTS ON THE DATES OF HEARING WITH CASES GETTING ADJOURNED FIRST OFFENDERS NOT RELEASED UNDER PROBATION OF OFFENDERS’ ACT (NATIONAL POLICE COMMISSION REPORT POINTING OUT TO 92% OF THE ARRESTS MADE CONCERN FIRST OFFENDERS).
PROMPT INTERVENTION OF COURTS ON ALLEGATIONS OF HUMAN RIGHT VIOLATION BY THE POLICE OR THE PRISON OFFICIAL AND EFFECTIVELY CURB SUCH EVIL PRACTICES

RUDUL SAH’S CASE OF BIHAR (A.I.R 1983 S.C.1086)
PUBLIC INTEREST LITIGATION BY SHEELA BARSE VS. STATE OF MAHARASHTRA - A.I.R 1983, S.C. 378 IN RESPECT OF CUSTODIAL / CORRECTIONAL INSTITUTION FOR WOMEN AND GIRLS.

THE COURTS ISSUED DETAILED PROCEDURES TO ENSURE HUMAN RIGHT FOR WOMEN AND GIRLS IN POLICE OR PRISON CUSTODY.
DECISIONS REINFORCED IN:


The National Experts Committee on Women Prisoners (May 1987) in their report to the Ministry of HRD, Government of India observed: “Women in custody are tragic testimony of judicial futility, statutory impotency and implementational calamity.”
This Committee also observed: “It is distressing that even benign directive of the Courts have not succeeded in altering the custodial reality.

Processes and procedures govern various forms of State custody and conditions prevailing therein continue mostly undisturbed and impervious to custodial reform groups.”
Commenting on the responsibility of the Courts, the Supreme Court observed, in Sunil Batra Vs. Delhi Administration, A.I.R 1978:

“The Courts need not adopt a ‘hands-off’ attitude in regard to problems of prison administration. It is all the more so because the convict is in prison under the order and direction of the court. The court has, therefore, to strike a just balance between dehumanizing prison atmosphere and preservation of internal order and discipline, the maintenance of internal security against escape and the rehabilitation of the prisoner”.
The rights of a human being:
Education
Health
Clean Environment
Adequate Shelter
Economic
Social
Cultural
These rights are fundamental, sacrosanct and inalienable for preserving the *dignity* of the individual - recall the preamble to our Constitution where "Fraternity assuring the *dignity* of the individual and the unity and *integrity* of the nation" have been stressed.
Exploitation of humans - man, woman, child - in any walk of life attracts these provisions of the constitution and the Special Act.
Constitutional violations met by Writ Jurisdiction of the High Court/ Supreme Court under Articles 32, 226, 134 and 136
CHILD’S RIGHTS

COMING TO THE RIGHTS OF THE CHILD -

THE JUVENILE JUSTICE ACT 2000 IS LARGELY BASED ON CONVENTION OF THE RIGHTS OF THE CHILD ADOPTED BY UN GENERAL ASSEMBLY ON 20-11-89

EXCERPT FROM ART.39 – DIRECTIVE PRINCIPLE OF STATE POLICY ARE RELEVANT IN THIS CONNECTION
POSITION OF VICTIMS OF CRIME IN THE CRIMINAL JUSTICE SYSTEM

- CJS ORIENTED TOWARDS ACCUSED
- POLICE INVESTIGATION
- COURT TRIAL
- INSTITUTIONAL CORRECTION
- CONSPICUOUS ABSENCE – VICTIM RELIEF
MARGINAL REFERENCE IN SECTION 357 Cr.P.C 1973 AND

SECTION 5 OF PROBATION OF OFFENDERS ACT 1958, EMPOWERING COURTS TO ORDER COMPENSATION (RESTITUTION) BY OFFENDER TO BE PAID TO THE VICTIM ON CONVICTION AND IMPOSING FINE.

HOWEVER, THESE PROVISIONS ARE RARELY INVOKED. FIRST TIME IN THE HISTORY OF INDIA, IN A PIL, IN RESPECT OF ABUSE OF POWER, GOVT. OF BIHAR WAS ORDERED TO PAY COMPENSATION TO VICTIM RUDUL SAH, IN 1983(A.I.R 1983 S.C 1086) IN THE CASE RUDUL SAH Vs STATE OF BIHAR. NOW, THIS IS FOLLOWED BY SEVERAL HIGH COURTS ACROSS THE COUNTRY.
POLICE INVESTIGATION IS NOT TOTALLY INDEPENDENT, THOUGH THE SUPREME COURT HAS RULED THAT NEEDLESS INTERVENTION, MUCH LESS INTERFERENCE, IN THE INVESTIGATION BY THE POLICE SHOULD BE AVOIDED AND SHOULD ARISE ONLY IN A RARE CASE.

FIR (SECTION 154-155 Cr. P.C) SETTING THE CRIMINAL INVESTIGATION MACHINERY IN MOTION, IS THE STARTING POINT OF POLICE FUNCTIONING. IT EXTENDS TO AND TERMINATES ON SUBMISSION OF THE FINAL REPORT (SECTION 173 Cr.P.C)
Violations of the Protection of Human Rights Act, 1993 dealt with by the National and State Human Rights Commissions.
Tailpiece:
Recognition of Human Rights in existence from the Vedic times
Artha Sastra prescribes treatment of offenders respecting HR

This is the germ of “Rule of Law”
(Art. 14)
RIGHTS OF CHILDREN UNDER JUVENILE JUSTICE ACT, 2000

PROTECTION AND REDRESSAL FOR VICTIMS OF CRIME
The ruler himself to practice protection of human rights

p#ja s¶KE s¶Kl raåO:
p#jana1 c çhtE çhtm- .
naïmçp#yl çhtl raåO:
p#jana1 tâ çp#yl çhtm- ..

(1- 16 - 43)
Reference in the earlier times, i.e. in the Scriptures:
happiness, equality, education, protection, practice of any faith, social security, humane treatment in legal custody, impartial and speedy justice, fair treatment of employees, special rights for women, protection of HR during and after war.
Vedas speak about “dharma” a compendious term for all human rights and duties - includes civil rights and criminal liabilities (vyavahara dharma) as also constitutional law.
Later on, these were paraphrased in the *Ramayana* and *Mahabharata* and subsequent literary texts.
Specific texts on dharma like ‘Kamandaka Niti’, “Sukra Niti” “Kautiliya” etc, focus on human rights.

Both the state and the individual were obliged to protect human rights.
Overriding principle - “dharma” - desire (kama), material wealth (artha) to be rejected if inconsistent with dharma - the definition of dharma i.e. that which sustains the world
Atharvana Veda says: “All should live together in harmony, supporting one another, like the spokes of the wheel”
Kamandaka mandated the ruler to protect the subjects from wicked officers, thieves and also against the greed of the king himself.
This recalls the Kural:

À^ÈVHQ kjtQatjmQpçkQ ÀVQVmQ k^tlQ

vÄv}QΩ ëvnQt}Q ©t}ÇlIQ

(©cHQak{]Q«m - 549)

ëv©lÄ nç]QV{]Q iÄe]QVÆ ëpiÇmQ

ak{lÄ nç]QV{]Q irí

(©cHQak{]Q«m - 552)
Special rights for women by ensuring protection throughout their life
Maintenance for wife, property for minors and women, social security, in “Sukra Niti”
Labour welfare - “Sukra Niti”
Capital punishment for custodial violence -
Impartial and speedy justice in “Atri Samhita”

Treatment of prisoners of war and conduct of warfare - Manu
Today there is clamour and concern for human rights - the above passing references show ancient Indian seers were fully aware of these and wanted happiness for all and there should be no exploitation. Perhaps the book “Human Rights and Indian Values” by Justice M. Rama Jois could lead to further exploration in this area.
THE LAST SLIDE
PLEASE
THANK YOU