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# UNIVERSAL DECLARATION OF HUMAN RIGHTS AND ITS IMPLICATIONS

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## **Abstract**

The Universal Declaration of Human Rights, 1948 *per se* is a milestone of international human rights document in the history of mankind. The Declaration does not have the force of law; however, it has the moral as well as legal obligation for all the nation members which have accepted to abide by the Charter of the UN *inter alia* the customary international law. The Declaration is a path-finding universally accepted human rights instrument which is considered to be the fundamental source of inspiration for all the people and for all the nations. The article dwells upon the historical significance of the Declaration and also highlights the initiatives on human rights undertaken by the UN in the post-1948. It analyses the relative impacts of the Declaration reflected on the international, regional and national instruments. The article not only focuses on the relevant provisions of human rights incorporated in the Constitution of India but also deals with the human rights jurisprudence evolved by the apex court of India.

## **Introduction**

The United Nations, as the supra-national body, is the only hope for mankind to save the succeeding generations from the scourge of man-made devastation for which protection of human rights of individual has been one of core the objectives for establishment of UN. As such, promotion and protection of human rights of individual began to occupy the centre-stage of the world organization, more particularly in the post-UN. The basic purposes and objectives, laid down in the UN Charter, not only set forth the important of human rights but also lay down the obligations of the UN and its members to realize the cherished goal. Henceforth, the global organization began to strive for adopting an international bill of human rights for all people and for all nations. The Universal Declaration of Human Rights, adopted by the UN General Assembly on 10<sup>th</sup> December, 1948, is a unique global human rights document which lays down a comprehensive universal standard norm of human rights for all. The Declaration is not only a

global human rights document but also a basic inspirational foundation for human rights development in all respects and at all levels. A significant impact of the Declaration has been reflected on various regional and national legal documents which have been adopted in the post-1948 elsewhere in the world.

### **Historical significance**

One of the outstanding features of the Universal Declaration of Human Rights is the process through which the UN General Assembly adopted without any dissenting vote with overwhelming consensus of the global community which has, eventually created a unique feature of the Declaration. Since the resolution of the UN General Assembly is *per se* a source of international law, the Declaration has become a global bench-mark of human rights standard norm. Global obligation ensures both the UN and its members to take appropriate measures individually or collectively for securing the universal recognition and due observance of human rights as set forth in the Universal Declaration of Human Rights and the Charter of UN as well. Therefore, it is pertinent that every nation member is obligated to observe and respect human rights of individual without any discrimination.

The Declaration is often termed as the Magna Carta of human rights and has also been considered to be a path-finding global document in the history of human rights. Even though, the Declaration defines the term ‘human rights’ and enumerates a comprehensive list of human rights as well, it does not stipulate the ways and means through which such inalienable rights and freedoms of individual shall be realized. Indeed, the Declaration was not primarily planned to be a legally binding human rights document and, as a result, it did not impose any legal obligation on the high contracting state parties. However, the implications of overwhelming support of international community and meaningful enumerations of universally accepted human rights standards have also created another unique feature of the Declaration. Such development helps in building up a well-founded global obligation for all the people and for all the nations to respect and honour human rights regardless of disparities among individuals. Here, it is worth mentioning to cite the statement made by Mr. Roosevelt, the then Chairman of the UN Human Rights Commission in the General Assembly Session while the process for adoption of the Declaration got underway; he pointed out that “in giving our approval to the Declaration today, it is of primary importance that we keep clearly in mind the basic character of the document. It is not a treaty; it is not an international agreement. It is not and does not purport to be a statement of law or global objection. It is a declaration of basic principles of human rights and freedoms, to be stamped with the

approval of this General Assembly by formal vote of its members and to score as a common standard of achievement for all peoples and of all nations.” Henceforth, it is apparent that the contents of the Declaration are not only a strong message of hope, equality, liberation and empowerment to all the peoples of the world but have also been found to be increasingly invoked and asserted as enforceable rights and freedoms of every human being.

In terms of its legal implications and values, it is observed by many eminent writers and thinkers of human rights that the Declaration has created a new rule of customary international law in the form of *jus cogens*. As such, it is pertinent to quote the statement made by Judge Nagendra Singh, the then judge of International Court of Justice, he opined that “the Declaration, therefore, was not a mere resolution of the UN General Assembly but a continuation of the Charter of UN and had the dignity of the Charter”. Hence, it is not an exaggeration to say that violation of any provision of the Declaration shall essentially amount to violation of the principles of the UN Charter. In addition, some of the provisions of the Declaration have turned to be a part of customary international law. Therefore, the very contents and implications of the Declaration have grown into inviolable customary international law thereby attributing the salient features of peremptory norms or *Jus cogens*. The World Conference on Human Rights held in Tehran in 1968 and in Vienna in 1993 also observed that the Declaration constituted an obligation for the members of the world community. Although the nature of such obligation is neither defined nor enumerated in any form, it has been generally understood and adopted by all that such obligation possesses all the requisite features of a binding customary rule. As such, human rights standard norms, set forth in the Declaration, have been widely followed and used as a unique fundamental basis in asserting for promotion and protection of human rights elsewhere in the world.

### **UN initiatives**

The United Nations proclaims that every individual is entitled to enjoy the inalienable rights and freedoms, laid down in the Declaration irrespective of whether he or she belongs to a particular group or nations. The reason being is that the Declaration applies to all human beings irrespective of all kinds of differences among the individuals. The provisions of the Declaration have been used as the fundamental benchmark for various UN initiatives and measures, more particularly in the post-1948. That is what the Universal Declaration of Human Rights is being remained to be a unique basis and source for rendering any kind of human services as and when they are called for. It could also be an important message to all the people who are committed for emancipation of inalienable human rights and freedom, and also to those whose rights and freedoms have been

subjugated. On other hand, development of such global human rights jurisprudence by the UN and its subsidiary organs, the contents of the Declaration are being consistently referred to by all and also increasingly found to be reflected them adequately in a number of international UN resolutions, policies, programs and multilateral treaties among others. This is evident that international documents, adopted under the auspices of the UN and its specialised agencies have incorporated the contents of the 1948 Declaration of Human Rights.

Adoption of specialized international human rights documents on different aspects shows the proactive measures initiated by the UN in the field of promotion and protection of human rights; however, those UN Declarations are not legally binding documents. Having realized the significance of binding international documents, the UN, during the passage of time, has initiated to transform those declarations into binding conventions and covenants by reflecting the core principles and values set forth in the Universal Declaration of Human Rights.

### **Impact on regional systems**

The UN does not specify in any provision of the Charter for making regionalism in the field of human rights; however, the very idea of evolving regional arrangements for human rights *inter alia* regional mechanisms for promotion and protection of human rights began to flow from the mandate of chapter VIII of the UN Charter and also from the situation circumscribed by the changing global phenomenon. Member states of the UN have pledged themselves under Articles 55 and 56 of the Charter as well as under the multilateral treaties to which they have acceded to promote, achieve and respect for observance of human rights and freedoms. Accordingly, some of the regional organisations, such as the European Union, the Organization of American States, the Arab Leagues and the African Union adopted regional conventions on human rights for their own regional purposes in conformity with the UN Charter and other UN human rights instruments. The actual initiatives for adoption of such regional arrangements for promotion and protection of human rights are on the rise and such regional efforts have been facilitated by the community and also found gaining their momentum ever since the adoption of the Universal Declaration of Human Rights, 1948. Therefore, the regional human rights arrangements, installed in different parts of the continents of the world, have reaffirmed and re-endorsed the human rights provisions embedded in the UN Charter *inter alia* the Declaration of Human Rights. As such, the legal recognition and legal guarantee of human rights of individuals by the global community has not only enhanced the growth and development of the contemporary international relations among the nations members almost in all respects but also dramatically helped to maintain and restore

international peace and security. To mention one of such regional conventions on human rights is the European Convention on Protection of Human Rights and Fundamental Freedoms adopted in 1950 which was the first regional convention ever adopted by the European Union. One of the important reasons for adopting a regional human rights system in the European continent was that Europe being the main theatre of two World wars as well as countless number of conflicts occurred in the past, it was felt immensely required for the European community to have their own regional arrangement on human rights so as to enable themselves to solve human rights issues and also to settle other related regional conflicts without contradicting the mandates of the UN Charter.

In similar way, the second regional human rights system was the American Convention on Human Rights which was adopted in 1969 by the Organization of American states (OAS) reflecting the contents of the Universal Declaration of Human Rights in matching with the UN Charter. The American Convention enumerates the idea of free man enjoying freedoms from fear both in the areas of civil, political, social-economic and cultural rights which are found more or less similar to that of those provisions set out in the 1948 Universal Human Rights Declaration. The third regional convention on human rights, which came into force after the adoption of 1948 Declaration, was the African Charter of Human and People's Rights which was adopted by the Organisation of African Unity (OAU) in 1986. The African Charter was adopted with the aim to promote human and people's rights and to ensure promotion and protection of human rights of individuals in the African region. It is apparent that such regional arrangement, reflecting the core principles and contents of the UN Human Rights Declaration, was set up with the aim to strengthen the respect and observance of global human rights standard and norms at the regional level for all times to come without any discrimination. Interestingly, both the international and regional norms of human rights set forth at two different levels are found to be complimentary and supplementary. This is mainly because of those regional organizations, established elsewhere in the world, have been set up to make realization of those provisions laid down in the Universal Declaration of Human Rights in their respective regions. Such regional human rights arrangement is also primarily adopted within the parameter of the Charter of UN and therefore, they are compatible with global human rights standard. Positive attempts are also being made to adopt regional arrangement on human rights in the Arab region as well as in the Asian region. Working of the regional mechanisms and their practical experiences reveal that regional system has facilitated the promotion and protection of human rights globally. It is worth mentioning that the regional human rights mechanisms, such as the European human rights bodies and Organization of American States agencies have adequately proved that they could also give some relative implications with

different values, especially to those rights and freedoms of individuals proclaimed in the 1948 UN Human Rights Declaration in harmonious and progressive manner as well.

### **Relative impact on Indian Constitution**

Many national constitutions enacted and adopted elsewhere in the world that came into operation in the post-1948, have reflected the UN human rights standard and norms in one way or other. They are, in fact, found to be greatly influenced and inspired by the provisions of the Universal Declaration of Human Rights, for instance, the national constitutions of Algeria, Burundi, Cameroon, Congo, Ivory Coast, Mali, Senegal and India, among others have followed the same suit. Although most of the national constitutions and their domestic legislations have not directly referred to the Human Declaration of 1948, they were either found reproducing the terminology of the Declaration or, adhering to its provisions indirectly. Henceforth, it is apparent that due recognition has been given to the contents of the Declaration almost in all the national legislations which came into effect in the post 1948. As such, the republic of India became one of the signatory member nations to the UN Human Rights Declaration of 1948 and eventually, the Constitution of India was also enacted and adopted by the Constituent Assembly on 26<sup>th</sup> November, 1949, and later, it came into force from 26<sup>th</sup> January, 1950 onwards. When the 1948 Human Rights Declaration got underway for its adoption in the UN General Assembly, the Constituent Assembly of India was also preparing to frame the Constitution of India. As such, the framers of the constitution of India were greatly influenced by the Declaration, thereby many constitutional provisions including the preamble to the Indian Constitution incorporated the provisions of the UN Human Rights Declaration by giving due recognition of global human rights standard.

A case in point is that the preamble to the Constitution lays down the rights and dignity of individual which imply that worth of inherent in human person is duly recognised and guaranteed by the law of the land. The preamble to the Constitution of India is also an integral part of it; therefore, the contents therein shall be considered as the inviolable rights of citizens and also an obligation to be realised by the responsible state. Those fundamental rights and freedoms, embodied in the part III of the Constitution are the civil and political rights of individual, are nothing but human rights in the context of India. Interestingly, those civil and political rights, as enumerated from Articles 3 to 21 of the Universal Declaration of Human Rights, are also found similarly in the Constitution of India under the banner of “Fundamental Rights” which are justiciable in the court of law. On other hand, economic, social and cultural rights, as envisaged in Articles 22 to 27 of the Declaration, are also adequately mentioned under the caption of

“Directive Principle of State Policy”. However, they are the collective rights of individuals and also considered to be the instrument of instruction for the responsible government. Unlike the Fundamental Rights under chapter III, the Directive Principles of State Policy under chapter IV of the Constitution is not justiciable in the court of law. Though, literally the term human rights are neither used nor defined expressly in the Constitution, it is clear evidence that the incorporation of parts III & IV in the Constitution has mandated both civil and political rights as well as economic, social and cultural rights of individuals which are the similar with the set of human rights found in the Universal Human Rights Declaration of 1948. Such inclusion of both the sets of human rights in the Constitution of India, as mentioned in the UN Human Rights Declaration, took place even before the adoption of the two sisters International Covenants on human rights adopted in 1966 by the UN General Assembly. This is also a clear testimony that the constitutional makers of India were, to a great extent, inspired and influenced by the Universal Human Rights Declaration while framing the law of the land. In addition, the Parliament of India has also enacted the Protection of Human Rights Act in 1993 under which the National and state Human Rights Commissions have been established. The apex court of India has also been increasingly invoking the provisions of the Declaration while interpreting the domestic laws of India in the light of many human rights related cases. Indian judiciary also adopts and follows pro-active interpretation of municipal laws in matching with the universally accepted standard and norms of human rights.

### **Judicial responses**

International treaties are not the self-executing documents in India unless these documents are required to be transformed either into municipal law by the competent legislature or the apex court of India allows the same to be implemented through its pro-active decision. This is mainly because of the constitutional scheme as mandated in Article 51 (C) read with Article 253 of the Constitution which empowers the parliament to make appropriate legislations for implementing and enforcing the global agreements or conventions in its domestic system. On other hand, the judiciary in the commonwealth countries like India is empowered to interpret the constitutional provisions by relying on the contents of the Charter of UN and also other provisions of the International human rights instruments to which the nation has been a party. As such, the courts in India are interpreting the text of the Constitution liberally by referring to the Universal Declaration of Human Rights *inter alia* the other relevant global human rights treaties. For instance, the Supreme Court of India held in *People’s Union for Civil Liberties vs. Union of India*. (1972)3 SCC 433) that the rules of customary international law, which are not found contrary to

the municipal law of India, shall be deemed to be incorporated in the domestic law. In *Kesavananda Bharti vs. State of Kerala* (AIR 1973 SC 1461), the apex court also held that this court must interpret Article 51 of the constitution in the light of the UN Charter as well as the Universal Declaration of Human Rights. The same court in the *Jolly George Varghese vs. Bank of Cochin*, (AIR 1980 SC 474) held that the Declaration has not created a binding set of rules; however, international binding treaties have stimulated and informed the national judicial institutions and also inspired the national legislative actions. Similarly, in *Kishorchand vs. State of Himachal Pradesh*, (1991 SCJ 68), the same court held that the Declaration has the great influence in the interpretation of the Constitution of India. Therefore, it is clear that the juridical approach towards the promotion and protection of human rights in India has shown its pro-active approach towards the evolution of a new human rights Jurisprudence within the domestic legal framework in matching with the universally accepted standard and norms of human rights set forth in the Declaration.

### **Conclusion**

The Declaration sets out a comprehensive list of rights and freedoms of all human beings, but it does not stipulate the means and modes by which the two set of rights human rights shall be promoted and protected. It is also equally true that the Declaration bears not only the moral obligation but also the legal obligation for those states parties which have accepted to abide by the UN Charter *inter alia* rules of customary international law. The Declaration has, undoubtedly provided for a globally accepted standard as well as undisputed path-finding instrument in the history of human rights that ought to be recognised and guaranteed by all the peoples and all the nations.

The Declaration has been an important document and also fundamental source of inspiration for promotion and protection of human rights of citizens and individuals at all levels. Indeed, the provisions of the Declaration have been, adequately found reflected in the regional conventions on human rights adopted elsewhere in the world as well as in several other national constitutions including Indian constitution. The Constitution of India, which came into force from 26<sup>th</sup> January, 1950, was greatly influenced by the Declaration; therefore, those fundamental rights and freedoms guaranteed in the part III of the Constitution and those provisions, set forth in the directive principles of state policy, are found to be more or less similar to that of those provisions of the Declaration. In addition, the apex court of India held in many cases that the Universal Declaration of Human Rights has the great influence in India, especially through the interpretation of the text

of the national constitution. Therefore, such pro-active juridical approach, adopted by the Supreme Court, has revealed the progressive development of a new human rights jurisprudence and also endorsed a positive assertion of globally accepted human rights standard and norms into the Indian legal system.

### **Key words**

Supra-national body, inalienable rights, jus cogens, pro-active, regionalism, peremptory norms, instrument of instruction, constitutional mandate, justiciable

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