

Human Rights and Terrorism Where Lies The Balance ?

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The present day social consciousness of human beings has its origin in the development into an organized social system by them from what was presumably their individualistic, lawless and anarchic living. There is difference of opinion on how society was formed or for that matter, how the universe or the world or the earth came into existence.

According to Indian Vedic Philosophy, it is said that the entire "Srishti" i.e. the universe, was originally lying in its smallest form, a tiny atom, and probably due to some reason it got disturbed and with a sound of "Om" a bang occurred spreading billions and billions of particles of fire in the Universe many of them again breaking up in to yet smaller peices. The cooled down particles like earth at a particular slab of temperature brought signs of life. The western idea may have somewhat different explanation to offer how earth was born and became habitable but after the earth became habitable, the life on earth, Darwins theory of evolution explains, started with amoeba, a one-cell creatures living in water. Then those who could live both in water and on land came into being then animals and finally the man was born.

The original states of all living beings was imagined to be one of total anarchy where might alone was right, just like the bigger fishes swallow the smaller ones. Oppressed by the law of fishes, it is said that Manu, the son of Vivaswat, the King applied "Raj Dharma" - a system of law based on the "Smirities" for the well being of his subjects and propounded that King was not the source of the law. Unlike this old Indian system, the western thought was that King was sovereign and God's deputy on earth and subject only to the laws of God and accountable to Him alone. For them, law was command of sovereign and not a rule of conduct but later the concept changed. It is felt that every individual, by consenting with others

to make one body politic under a Government, though puts himself under the obligation to the ruler but since the governing powers flowed from the people and power of the ruler is only fiduciary in nature to act for certain ends, as such actual power lies with people.

Now almost in all nations, including American and Asian countries, the Central idea of socio-political thoughts is that all power given with trust, for attaining an end being limited by that end, if manifestly neglected or opposed, the trust must be forfeited. For no man having a power to deliver up his preservation or consequently the means of it, to the absolute will and arbitrary dominion of another, whenever any one shall go about to bring them into such a slavish condition, he will always have a right to preserve what he had not a power to part with and to rid him of those who invade this fundamental, sacred, and unalterable law of self preservation for which he entered into society. Thus concept of human rights is based on the premise that all men are created equal, and, that they are endowed by their creator with certain inalienable rights including the right of life and liberty.

This concept of human rights has an interesting history. It was on 15th of June 1215, when first of all people of England obtained a historic charter of civil liberty and political rights from King John. After about five hundred eighty four years, in 1789 the Representatives of people of France formed into National Assembly and resolved to set forth in a solemn declaration the natural imprescriptible and inalienable rights, which included individual liberty, freedom of opinion, right of property and equality before the law. Only two years thereafter on 15th of December 1791, Bill of Rights became part of Constitution of United States of America incorporating similar provisions such as right to life, liberty and property of its citizens. However, Germany and some communist countries did not give much importance to the Human Rights before the two world wars were fought. After the Second World War, on 26th of June 1945, Charter of the United Nations was signed by the representatives of the Governments constituting the United Nations, Article 55 of which declared that "*the United Nations shall promote universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race sex, language or religion*".

In the meantime our country came under different foreign rules resting with the reign of British King over us. Gradually the Westminster parliamentary system was established in India and in that process a society attached to the democratic principles of government was born. Then under the guidance of our national leaders, the foreign rule ended and we became free on 15th August 1947. After attaining independence from British Rule we needed a constitution so as to form government to run the politically independent society. A constituent Assembly chaired by Dr. Rajendra Prasad, with the help of Draft Committee headed by Dr. B.R. Ambedkar, gave birth to the Constitution of India on 26th of November 1949, which came into force on 26th of January on 1950.

Our constitution has incorporated fundamental rights of all citizens in Part III thereof. Article 14 of the Constitution deals with the right of equally before law; Article 19 with freedom of expression, assembly and travel; and, Article 21 deals with the rights of life and liberty. Whether it is Magnacarta, American Bill of Human Rights, the French Declaration, UN charter on Human Rights or the fundamental Rights enshrined under the Constitution of India, they all recognize the inherent dignity and inalienable rights of all human beings, which no Government can invade. However, the said fundamental rights are not absolute and are subject to reasonable restrictions e.g. Article 21 while providing that “*no person shall be deprived of his life and personal liberty*” restricts the right with words “*except according to procedure established by law*”. Article 22 of the Constitution also permits preventive detention for limited period in certain situation. If life and liberty is made absolute right then there will be none to protect those who are already weak and oppressed, the criminal will have free hand and security of innocent citizens will get imperilled. In other words it is rightly felt that it is not less important to detain and punish anti-socials and criminals than protecting the Human Rights.

It has been currently noticed that there crop up situations when freedom of individuals are endangered by certain anti-social elements who at times by their acts of terrorism, or spreading hatred, endanger even the national security. To deal with such situation ordinary process of law becomes ineffective. In India at present National Security Act 1980 is used for the purpose of preventive detentions on the charges of endangering national security. And some individuals are arrested under Terrorist and Disruptive Activities Act 1987, which provides

extra ordinary procedure for trial. Under its provisions a detenu is presumed guilty unless he proves himself innocent and, confessions made to the police are made admissible in courts. However, the methods by which police gets an accused to confess a crime are coercive and unethical and most of such confessions cannot be said to be voluntary. On the other hand those who are victims of terrorism or the like crime, do not want to come forward to depose or report. Therefore, the origin of the problem to invoke the said preventive laws exists largely due to the problem of none volunteering to adduce evidence due to terror and fear in court proceedings.

At times great hue and cry is raised legitimately when some members of security forces put these stringent laws to misuse. In the garb of using preventive laws such individuals from security forces cannot conspire to kill innocent citizens in alleged encounters or to commit sexual offences on women. Definitely the citizens never gave this right to any one running the administrative machinery. Such excess if and when made by any individual amounts to clear violation of recognized Human Rights. Detention of citizens without trial for howsoever laudable objectives, is not acceptable to Human Rights activists. But in trial before the criminal courts the witnesses avoid to depose on one pretext or the other. Primarily because of threat to their life and security. Probably that is why in many of the criminal cases the courts fail to punish the culprits. It is a sad commentary indeed that very few of the criminals are punished. Are all those acquitted really innocent? Is it not equally true that innocent bus passengers are being massacred by the terrorists just as some terrorists are said to be killed in fake encounters? Then where lies the balance?

In the words of Nani A. Palkhiwala "Liberty has a hypnotizing sound; while unfortunately responsibility has no sex appeal, freedom is like alcohol, it must be taken immoderation. Perhaps we are making life too easy for criminals and too difficult for law-abiding citizens. In free societies too many crooks break the law, blight young lives, traffic in drugs, and claim the fundamental rights to exploit commercially sex and violence. Our values today are drastically eroded, because too many men with no more moral back bone than the chocolate eclaire claim the freedom of expression and action which results inevitably in increasing the numbers of violent criminals..... We have to strike an acceptable balance

between the proper interest of the society, which wants criminals to be put out of harm's way and the equally proper instincts of libertarians anxious that nothing should imperil the right of the citizens”.

It is gathered that those who call themselves champion of Human Rights are themselves committing its breach in their own countries. As such it can be realized that the laws are not perfect nor the society can ever be perfect. The law attempts to regulate social interacts, arbitrates conflicting claims and demands. Security of persons and property is an essential state function. It could be achieved by instrumentality of criminal law. Living laws must have to find answer to new challenges arising out of cross culture conflict. Therefore, law alone as the corner stone of the edifice of order should meet the challenges conflicting the society. (See Seveka case AIR 1991 Supreme Court 1463). I therefore, feel that law alone will have to keep balance between the freedom to law enforcing agencies and the freedom to law breaking hoodlums so that the innocent law abiding citizens may feel safe, live with peace and prosper with pride.