PRE BRITISH HUMAN RIGHTS JURISPRUDENCE

*Justice B.N. Srikrishna**

> "Basically we could not have peace, or an atmosphere in which peace could grow, unless we recognized the rights of the individual human beings…their importance, their dignity…and agreed that was the basic thing that had to be accepted throughout the world."
>
> Eleanor Roosevelt, USA

Human rights are the basic rights and freedoms to which all humans are entitled. The concept of human rights has existed under several names in European thought for many centuries, though perhaps coming into prominence since the time of King John of England. After the king violated a number of ancient laws and customs by which England had been governed, there was a popular upheaval and his subjects forced him to sign the Magna Carta, or Great Charter, which enumerates a number of rights of the people, which later came to be termed as human rights.

The expression 'human rights' is of recent origin. Even in its French-inspired form of "Declaration of the Rights of Man" (*Declaration des droits del'homme*), the concept dates back only to the last decades of the eighteenth century. The idea, however, of the law, or the law giver, defining and protecting the legal rights of men, mainly the mutual rights of the members of the community, is very old indeed.

Some scholars, Western and Indian, hold the view that 'human rights' is a concept gifted to the world by Western thinking and reached its high point between the 19th and the 21st century. All are however in agreement that human rights are inherent in a human being and available to a human by reason of birth as a human. If that be the true concept of human rights, then it would be interesting to examine if there was any concept of human rights prior to the period mentioned earlier. Was the concept a gift of the British to India, or did it exist in the pre-British period? If it existed in the pre-British period, what were its contours?

The East India Company established its first foothold in India in 1612. For the next about a century and a half, the Company functioned primarily as a trading company, establishing trading posts with the permission of the Mughal Emperor of India and competing for business with other European trading companies. However following the decline of the Mughal Empire in 1707 and after the East India Company's victory at the Battle of Plassey in 1757, the Company

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began to formally administer its expanding dominions. By the mid-Nineteenth Century, the East India Company had become the paramount political and military power on the subcontinent, its territory held in trust for the British Crown. Thus the middle of the 19th century is effectively the commencement of the British Period in India, although they had their presence in India from the latter half of the 17th century.

When the British came to India, the country was ruled by many rulers who exercised sovereignty in their territories, with internecine wars being very common. Although this was the political state of the country, there was a running golden thread of Indian culture that held them together as Indians. That golden thread comprised the manner in which society was constituted in accordance with the scriptural injunctions in the *Shrutis*, *Smritis*, *Itihasa*, *Puranas* and the vast body of literature which goes under the name of *Shastras*. The rights and duties of the people and the rulers were set out therein and a survey of them gives an apercu into the Indian thinking on various issues including human rights.

Deprecating the common belief that the concept of Human Rights in India is essentially a gift of the British Rule as erroneous, Satish Kumar, in his essay on "*Human Rights and Economic Development: The Indian Tradition*"[1] explains the impact of Western influence on Indian Human Rights jurisprudence fairly accurately. He says that although it is often said that the concept of human rights in India is essentially a remainder from the British rule, this may be true only negatively. The British deprived the colonial subjects of basic political and economic rights, the independence of the country was lost and its economy was mortgaged to the needs of British Industrial development. It was inevitable for the Indians to fight for their rights. He further goes onto say:

> "[I]f any Western nation is to be credited with any bearing on the Indian conception of human rights, it is France and the French Revolution. The concepts of liberty, equality and fraternity attracted the attention of even the far off Indians. Tipu Sultan, the Mysore ruler who died fighting the British in the 18th century, even planted a Tree of Liberty at Srirangapattunam and enrolled himself as a member of the Jacobin Club after having been influenced by the ideals of the French Revolution."

We may classify the pre-British era into four distinct periods for convenience of treatment and better understanding of the evolution of human rights jurisprudences in each period. They are: (1) *Shruti*, *Smriti* and *Dharmashastra* period; (2) Buddhist period (3) Muslim period and (4) Bhakti cult period.

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[1] Satish Kumar, *Human Rights and Economic Development: The Indian Tradition*, 3(3) HUMAN RIGHTS QUARTERLY 47-55, 48 (1981).

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I. SHRUTI, SMRITI AND DHARMASHASTRA

Indian values regarding human rights perhaps have the oldest pedigree. *Rigveda* which is regarded as the oldest literature, declares:

> *"Sangachchdhyan Sambadhdhyan San Woh Manansi Janatam*
> *Samani Mantra Samitissamanni Samanam Manassaha Chittamesham*
> *Samani Woh Aakuti Samana Hridayani Who*
> *Samanmastu Mano Woh Yatha Vassuhasati"*

["Gather together, talk together, know each other's minds; may your consultations and assemblies be unified, may your minds and intellects be common; may your resolutions be united and your hearts beat in unison; may your minds unite to make you happy"].[2]

This indeed is the assertion of equality and fraternity, that was much later declared by the French at the end of the Revolution and reiterated in the American Constitution. That is the very basis of human rights jurisprudence.

The *Rig Veda* reaffirms that all are equal and there should be universal brotherhood for all round development of society saying:

> " *Ajyeshthaso Akanishthaas Eteh Sambhrantaro Wawridhdhuh Saubhgyaah*"[3]

["Without distinction of superior and inferior these are brothers growing up together for prosperity"]

Atharva Veda declares the concept of human equality by the words:

> "*Samani Prapa Saha Wotrbhaga Samane Yoktre Saha Woh Yunajmi Ara Nabhimivabhita*"

["You have equal rights in articles of food and water. I bind you to the yoke to live together like the spokes of a wheel and the hub"].

The concept emphasized here is of mutual assistance and cooperation for the development of all in society.

Indeed if we look at the practices of all major ancient civilizations we find that every one of them had a similar ideology and a similar system designed

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[2] Rigveda Samhita, Mandala 10, Sukta 191, Mantra 4.

[3] Rigveda Samhita, Mandala 5, Sukta 60, Mantra 5.

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to protect the individual's safety and dignity both in times of war and peace.[4] Paul Lauren[5] pithily observes:

> "Despite their vast differences, complex contradictions, internal paradoxes, cultural variations and susceptibility to conflicting interpretation and fierce argumentation, all of the great religious traditions share a universal interest in addressing the integrity, worth and dignity of all persons and consequently, the duty toward other people who suffer without distinction [...]"

Expressing similar views about other traditions such as Judaism, Buddhism, Confucianism, Christianity and Islam, he argues that together they make three significant contributions to the evolution of international human rights. Firstly, they "established values, normative standards, and ideals that proved to be enormously important sources of inspiration and strength for those who campaigned for human rights." Secondly , "by seeking to develop a moral imperative or universal sense of obligation toward humankind, these religious traditions helped establish an ingredient essential for any and all international human rights: a concept of responsibility to common humanity". And thirdly, "by developing concepts of duties, these religious traditions provided an inherent beginning for discussions about rights."

Indian society since inception was essentially a duty based society. All aspects of human conduct, from cradle to the funeral fire, were governed by rules that compendiously were called *dharma*. The concept *dharma* was that of a universal, cosmic principle that holds all mankind together.[6] The duty of a king to protect his people, the duty of a son to take care of his mother and wife, the duty of a daughter to remain a faithful wife etc. The creation of duty in one individual necessarily resulted in the creation of a right in other individual and the protection of such right. Therefore, instead of making right as the foundation of social life and establish a rights based society, the ancient philosophers of this land preferred to establish *a duty based society where the right given to an individual is the right to perform his duty*.[7]

> The *Vishnupurana* expatiates on this idea and goes onto declare[8] :

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4 Surya P. Subedi, *Are Principles of Human Rights "Western Ideas?": An Analysis of the Claim of the "Asian" Concept of Human Rights from the Perspectives of Hinduism*, 30(1) California Western International Law Journal 45 (1999).

5 Paul G. Lauren, The Evolution of International Human Rights, 5 (1998).

6 "*Dharanaddharma Ittyahuh Dharmo Dharayate Prajah*", Mahabharata, Shantiparva, 110-11.

7 Rama Jois, Seeds of Modern Public Law in Ancient Indian Jurisprudence, (1990).

8 *Supra* note 7.

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"*Atraapi Bharatam Shrestham Jamboodweepe Mahamune*

Yatoh Hi Karmabhuresha Tatonya Bhogbhumayah"

["in the Jamboodweepa, Bharata is regarded as great because this is the land of duty in contradistinction to others, which are lands of enjoyment"]

Mahatma Gandhi echoed this thought and said "India is essentially Karmabhoomi (land of duty) in contradistinction to Bhogbhoomi (land of enjoyment)"[9]

The immortal injunctive words of Srikrishna in the Bhagavadgita, "*Karmanyewadhikaraste Ma Phaleshu Kadachan*" exhortingly remind us that humans have only the right to do their duty without seeking reward.

Prof. M.P.Singh has an interesting explanation for this transformation from duty based to rights based society that we see today. He says:

> "If a right so defined always creates a corresponding duty, could it not be argued that existence of duty in one person towards another is as good as the creation of the right in the latter? The main objection to such argument is that what happens if the person on whom duty is imposed does not perform it. The answer is that in either case it is a breach of law, which could be corrected by legal action. Just as legal action could be instituted for the enforcement of rights; it could also be instituted for the enforcement of duties. But because in the West the concept of human rights developed against the state, perhaps theoretically and strategically state could not be subjected to duties unless the existence of rights was recognized in the individual preceding the creation of the state. Therefore the rights theory developed the way it has done." [10]

In pre-British India, people were deeply rooted in tradition and religion. *Dharma* was their watchword for all societal transactions, kings and subjects alike were subject to *Dharma*. Transgressions from *Dharma* not only led to opprobrium but even gave the right to the subjects to dispose of the unjust ruler. *Brihadaranyaka Upanishad's* description of *Dharma* as the protector of the weak and the instrument by which the weak can challenge the oppressor in the words "*Tadetat Kshatrasya KshatramYaddharmastasmaddharmatparamnastyatho Abaliyaanbaliyansamashanshte*" ['*This Dharma is the king of kings and there is nothing beyond it as it enables the weak to prevail over the mighty*'][11].

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[9] M.K. Gandhi, My Picture of Free India, 1 (Anand T. Hingorani ed., 1965).

[10] M.P.Singh, *Human Rights in the Indian Tradition – Search for an Alternative Model'* in Human Rights and Basic Needs – Theory and Practice in India 3 (M.P. Singh *et al.* ed., 2008).

[11] Brihadaranyaka Upanishad, 1-4-14.

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The coronation oath of office of King Vena is described in the Mahabharata in the words:

> "*Pratigyaan Chaadhirohaswah Manasa Karmana Girah;*
> *Palayishyamyaham Bhauman Brahma Ityewah Chaskrit;*
> *Yashchaatra Dharmo Nityoktoh Dandanitibyapashryah;*
> *Taptashankah Karishyami Swawasho Na Kadachan*"[12]

['Take an oath by your mind, deeds and words that you shall protect the world considering it as equivalent to its creator; that you shall act in accordance with Dandaniti and not your own caprice.']

Hence to say that even in such a society there is no recognition of human rights would be a travesty of truth and gross injustice to a highly civilized society. The *Brihadaranyaka* injunction reminds one of the awesome power of writ jurisdiction in our constitutional courts, that hath no bounds but self imposed ones. *Brihadaranyaka Upanishad* declares that the ruler too is obliged to follow *Dharma* on pain of sanction for infraction. Dharma was all encompassing from natural justice to equality to considerate treatment of all mankind and exhortation to codetermine for betterment of humankind. Betterment of each individual is the *raison d'être* for later societies to identify and recognize human rights as basic and inherent in humans.

While Western society stressed on worldly progress and acquisition of material comforts, ancient Indian society emphasized both *Pravritti* and *Nivritti*; *shreyas* and *preyas*. *Pravritti* was the urge to actively engage in material pursuits while *Nivritti* denoted the pursuit of spiritual pursuits. *Kathopanishad* teaches us that *preyas* is material happiness, while there is yet another, spiritually attainable, happiness of a permanent nature called *shreyas*. It is hardly a wonder, therefore, that with this world view Indians emphasized *Dharma* as the instrument for achieving both.

Indian thinking divided the objectives of life (*purusharthas*) into four – *Dharma, artha, kama* and *moksha.* The first is the primary compendious principle; the second represents material prosperity; the third, worldly desires, and the fourth, permanent liberation from the strife and pains of life and eternal bliss. The Indian thinkers believed that *Dharma* was the root cause of the other three and emphasized its vigorous pursuit. Hence the famous lament of Vyasa *Maharshi* in Mahabharata : "*Dharmadarthashcha Kamashcha Tasmat Sa Kimartham Na Sevyate*"[13] [*Dharma* leads to *artha and kama*, so why is that not pursued?']. In fact, Manu goes so far as to say: "*Parityajedarthakamau Yoh Syatam Dharmawarjitauh*" ['*artha* and *kama* bereft of *Dharma* should be forsaken']. He thinks that pursuit of other *purushartha's* bereft of *Dharma* was counter-productive.[14]

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[12] MAHABHARATA,Shantiparva, 59, 106-108.

[13] *Supra* note 12, 18-5-49.

[14] MANUSMRITI 4-176.

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Dharma thus became the sheet anchor of the society. It injuncted humans to compassion, kindness, service, consideration and humane behaviour towards all, non-violence, truth and myriad other ethical values on which human rights are based. These were the duties of all humans in society and their transgression resulted in sanctions on individual constituents in society, which could be in the form of ostracization at the lowest, and punishment at the hands of the state represented by the king, at the highest. Even the king was subject to *Dharma* and transgression by him could result in his being deposed by popular verdict or being defeated by popular uprising or by another king warring for upholding *Dharma*. Hence, the concept of *Dharmayuddhas* and the repeated injunction to Arjuna by Sri Krishna "*Yudhyaswa Wigatajwarah*" ['Get rid of your delusive fever and battle']

The first clear statement of rights is found in Kautilya's *Arthashastra*, where justice was assured as a fair trial and the right to produce witnesses. Citizens had a right to trade and commerce, right to inheritance and to get standard wages. Women's right to *Stridhana* were recognized as was the right to widow remarriage and, in some cases, even the right to divorce the husband.[15]

People were guaranteed the right to protection by casting a corresponding duty on the Rulers. They had to perform their duties in accordance with the tenets of *Rajadharma*, the equivalent of constitutional law in ancient India. These principles applied to all rulers ruling in any part of the country.

In *Kamandakiya Nitisara*, an important authority on *Rajadharma*, the following verse brings out the right that the citizens had and the corresponding duty of the king to ensure this right to them:

> "*Aayuktakebhyaschorebhyah Parebhyoh Rajballabhaat;*
> *Prithwipatilobhachch Prajanam Panchadhavayam;*
> *Panchprakarmapyetadpohyam Nripatebharyam*"[16]

['Subjects require protection against wicked officers, thieves, enemies of the King, Royal Favorites (such as queen, princes etc) and more than all, against the greed of the king himself. The King should insure the people against these fears'].

The best paradigm of enforcement of human rights is brought out in the *Rajatarangini* of *Kalhana*, the Kashmiri poet (12th century). He describes an incident of how King Chandrapida (680-699AD) enforced the human rights of a poor and humble cobbler. The officers of the State wanted to construct a temple to the Royal deity *Tribhovanaswamy*, but found the hut of a cobbler obstructing the construction and the cobbler refused to move out. They decided to demolish the

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[15] Satish Kumar, *supra* note 1.

[16] KAMANDAKA V 82-83.

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hut. The cobbler appealed to the king for justice and said that his hut was as dear to him as the palace to the king. In thundering words of rebuke to his officers, the king says:

> "*Niyamatam Winirmanam Yadhyanyatra Vidhiyataam;*
> *Parabhumyapaharen Sukritam Yah Kalankayet;*
> *Yeh Drashtarah Sadasatam Teh Dharmawigunaah Kriyaah;*
> *Wayameb Widadhmaschet Yatu Nyaayen Kotdhwana*"[17]

['Stop the construction or move it elsewhere. Who wants to incur the blot of grabbing someone's land on one's merits! If we, the overseers of good and bad deeds, indulge in acts opposed to *Dharma*, then who will follow the path of justice?']

The sequel was that the cobbler's hut was restored unharmed to the cobbler who gratefully acknowledged to the king:

> "*Rajdharmanusaaren Parvatta Tabochita;*
> *Swasti Tubhyam Chiram Stheya Dharmya Brwittant-paddhatih;*
> *Darshayattridrushishraddhah Shradhdheya Dharmachaa-rinam*"[18]

["It was appropriate for you to yield to another in accordance with *Rajadharma*. May you prosper and live long, establishing the path of dharma. Seeing such a faith in dharma of yours, others would follow dharma"]

Amelioration of the misery of persons suffering from poverty, disability, illness and such handicaps is enjoined as the *Dharma* of every householder. This right is ensured by casting a duty on those they are dependent on, and also on the State. Mahabharata declares that Dharma includes the duty of an individual to maintain his dependents saying:

> "*Akrodhah Satyawachanam Sanbibhagah Kshama Tatha;*
> *Prajanah Sweshu Dareshu Shauchmadroh Ewah Cha;*
> *Aarjawam Bhrityabharanam Nabbaite Sarvvarnikakah*"[19]

["Being free from anger, truthfulness, sharing wealth with others, forgiveness, procreation of children from one's wife alone, purity, absence of enmity, straightforwardness, maintaining persons dependant on oneself, are the nine rules of Dharma of persons belonging to all varnas"].

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[17] Kalhana, RAJATARANGINI, Ch. 4.

[18] *Id.*

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Significantly, the duty to share wealth and welfare of employees are equally included in them.

Hindu religion believed in religious catholicity and jealously guarded the rights even of the non believers. This was enjoined as a tenet of *Rajadharma*. The *Dharmakosha*[20] proclaims: "*Pashandnaigamshrenipugwratganadishu; Sanrakshetsamayam Raja Durge Janpade Tatha*" ["The king should protect associations of non believers and believers in Vedas, of traders, uncultured people (equally) in the fort and villages"]

The development and respect for human rights in ancient India is also seen in the directions given in the texts for treatment of prisoners of war and vanquished kings. Kautilya's *Arthashastra* prescribed fines for officers who obstructed or caused to obstruct prisoners in their daily routine of sleeping, sitting, eating etc.[21]

The *Arthashastra* also prescribes death sentence on anyone for the offence of rape committed against a woman arrested by an officer of the State.[22]

Hindu texts are fairly clear on the rules of warfare and these are codes that have been strictly adhered to since time immemorial. These texts also elaborately prescribe the treatment of soldiers, prisoners and vanquished kings.

Manusmriti directs the king to place a relative of the vanquished king on the throne imposing necessary obligations after having ascertained the wishes of the conquered people. It further directs the victorious king to declare lawful the customs of the inhabitants and to honor the newly appointed king and his personal attendants with precious gifts."[23]

Kautilya, showing a deep understanding of the criminal justice system, attaches great importance to human rights on how the invaded ruler and his ministers should be treated. He recommends that they should be treated with humanity and justice and show mercy towards the people defeated in war.[24] He advocates that the defeated king should be made an ally and the key people advising the defeated king should be eliminated through silent war.

Kautilya believed that law should be in the hands of the king and punishments need to be awarded to those who are guilty so that the king can protect himself from social unrest and unhappiness. He believed that punishments were a means to an end and that end was prevention of commission of a crime. He

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[19] Mahabharata, Shantiparva, 60-7-8.

[20] Dharmakosha 70.

[21] Kautilya, Arthashastra, 255, 233-S.

[22] *Id.*, 256.

[23] Manusmriti, Chap. VII, 202-21, Vs 03.

[24] Pravin Chandrasekharan, Kautilya: Politics, Ethics and Statecraft (2006).

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was essentially a reformist and he believed that punishments could reform a person and hence the society.[25]

II. MUSLIM PERIOD

In Islam, when we speak of human rights, it means the rights that have been granted by God.[26] Since, in Islam, human rights have been conferred by God, no legislative assembly of the world can take away those rights, nor can they make any amendments or changes therein. It follows, thus that no one has the power to abrogate or withdraw them. They are universal, and have to be followed by every believer of Islam.

The *Quran* says, in this regard: "those who do not judge by what God has sent down are disbelievers. They are the wrongdoers (*zalimun*). They are perverse and lawbreakers (*fasiqun*)".[27] If the temporal authorities begin to believe that the laws and decisions made by them as right, and disbelieve those given by God, then they are wrong. *Zalim* is he who works against the truth. Also, if they regard the tenets laid down by God as correct, but knowingly reject them and enforce their own decisions, then they are the mischief mongers. *Fasiq*, is a law breaker, one who disregards the bond of allegiance. Because the rights granted by God are permanent, perpetual and eternal, they need to be respected and upheld always.

The Muslim rulers in India were avid followers of their religion. Islam also talks of certain rights granted by God. Islam lays down some rights for man as a human being, whether he belongs to the religion or not, whether he is a Muslim or otherwise. Abu Bakr, one of the close companions of the Prophet said that it is the duty of the state to protect the rights of those who cannot protect themselves.[28]

Islam recognized the right to live and respect for human life as primary rights of human beings. This essentially meant the right to live with dignity, having the freedom of choice to live life according to the dictates of one's conscience, without impinging on similar rights of others.

The Holy *Quran* lays down[29]: "Whosoever kills a human being without (any reason like) man slaughter, or corruption on earth, it is as though he had killed all mankind".[30] Taking away another's life in punishment for murder or the

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[25] *Id.*

[26] TAHIR MAHMOOD, HUMAN RIGHTS IN ISLAMIC LAW (2008).

[27] THE QURAN, V 44, 45,47.

[28] Maqbul Ilahi Malik, *Human Rights in Islamic Jurisprudence* , 3(3) HUMAN RIGHT QUARTERLY 55-67.

[29] JOIS, *supra* note 7.

[30] THE QURAN 5:32

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question of punishment for spreading corruption on earth could only be decided by a competent court, while a competent government shall decide any issues of war with any country. In any case, a human being is not vested with the authority to take away a human life.[31]

In Islam too, we can trace the evolution of the 'concept' of human rights in the farewell address of the Holy Prophet where he unequivocally affirmed the equality of man and the inviolability of his person, property and reputation. This sermon was a comprehensive charter founded on the basic, fundamental, inalienable, residual rights of man guaranteed in written form, under the Holy *Quran*, which according to the followers of Islam constitutes the "Spoken Word of God".[32] According to Muslim tenets, these rights cannot be obscured or eradicated by any mortal power.

"And slay not the life which Allah hath forbidden, save for justice"[33], says the Holy *Quran*. Here, 'justice' means punishment of death given in accordance with the *Shari'ah*.[34] Islam distinguishes murder from taking away life as a punishment according to the due process of law. The *Quran* dictates that respect for life shall be maintained and forbids taking it away except according to the procedure established by law. Only a proper and competent court is empowered to decide whether or not an individual has forfeited his right to life by disregarding the right to life and peace of other human beings.[35] The Prophet declared homicide as the greatest sin. He says, "The greatest sins are to associate something with God and to kill human beings."[36] He also says that "whosoever saves a life, it is as though he has saved the lives of all mankind." Irrespective of his race, colour or nationality, it is almost a sacred duty imposed upon Muslims to save a fellow human from death.

One of the duties imposed by Islam on every Muslim is the duty of *zakaat* or charity for the benefit of the poor. The *Quran* says in this connection: "And in the wealth of the haves, there is due share of the have-nots"[37]

Under Islam also, we find this tenet reflected, when the Holy Prophet declared in the Sermon of the Farewell Pilgrimage: "No Arab is superior to an *ajam* (non Arab) and no *ajam* (non Arab) shall have superiority over an Arab. You are all in the progeny of Adam and Adam was created out of dust." The Prophet declared in another *Hadith*: "I bear witness that all human beings are brethren to each other"[38]

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[31] Mohmood, *supra* note 26.

[32] Maqbul Ilahi Malik, *supra* note 28.

[33] The Quran 17:33.

[34] Majid Ali Khan, *Universal Declaration of Human Rights and the Human Rights in Islam: A Comparative Study* in Tahir Mohmood; *supra* note 26.

[35] Mohmood, *supra* note 26, 5.

[36] *Id*.

[37] The Quran 51:19.

[38] Abu Dawud, Kitab al Salat.

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In other Islamic works also we see similar instructions. Caliph Omar is reported to have said "In Islam no one can be imprisoned without due course to justice".

Maqbool Ilahi Malik, in his essay Human Rights in Islamic Jurisprudence[39] narrates an interesting anecdote and proceeds therefrom to discuss the types of detention and the circumstances under which a person could be taken prisoner under Islam as follows:

> "Inferred from the *Sunnah* by Imam Khattabi and Imam Abu Yusuf: A tradition is reported by Abu Daud to the effect that, 'Some persons were arrested on suspicion in Medinah in the times of the Holy Prophet. Subsequently while the Holy Prophet was delivering the Friday Sermon (*Khuba*), a companion enquired of him as to why and on what grounds have these persons being arrested. The Holy Prophet maintained silence while the question was repeated twice, thus giving an opportunity to the prosecutor who was present there to explain his position. When the question was put for the third time, and it again failed to elicit a reply from the prosecutor, the Holy Prophet ordered that those persons should be released. On the basis of this tradition, Imam Khattabi argues in his *M'alimul Sunnah* that Islam recognizes only two kinds of detention: under the orders of the court and for the purposes of investigation. There is no other ground on which a person could be deprived of his freedom. Imam Abu Yusuf in his *Kitabul Kharaj* on the authority of the same tradition that no one can be imprisoned on false and unproved charges."

The *Quran* says, "There is no compulsion in the matter of religion".[40] The texts exhort followers to look at all religions equally and cast the duty on the rulers to protect religious sentiments of their subjects. "Do not abuse those they appeal to instead of God",[41] says the *Quran.*

Principles of natural justice are an integral part of human rights. The principle of *audi alteram partes* is recognized in Muslim jurisprudence. The *Sunnah*, refers to the following incident: The Holy Prophet sent Ali to Yemen giving him the following direction: "[Y]ou are not to take a decision unless you have heard the second party in the same way as you have heard the first."

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[39] *Id*.

[40] THE QURAN 2:256.

[41] *Id* 6:108.

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We see that both the main religions of the country declared equality of man as an important principle to regard. For the rulers and the ruled of those times, it was imperative to adhere to the canons set forth in the guiding texts. That was the basis of society and its working. Hence it was the duty cast upon everyone in society, be he prince or pauper, to treat every other equally. This was the way the right to equality was realized.

Religion is man's personal choice and ancient Indians recognized this fact. In both Hindu and Islamic texts, the right to practice a religion of choice and equality towards various religions is guaranteed.

III. BUDDHIST PERIOD

Vinaya Pitaka contains a description of a litigation in which a prince was pitted against a commoner in a litigation; the court held against the prince, which was accepted by the prince as binding on him.[42]

Influenced by humanistic teachings of Buddhism, Ashoka strove everyday for the protection of the human rights of his subjects. Torture and inhuman treatment of prisoners were prohibited under his rule. Ashoka had established a just and humane administration under which he administered justice to the subjects. The Sanskrit play *Mudrarakshasa* written by Vishakhadatta, a contemporary of Chandragupta Maurya, gives us glimpses of the importance given to the dispensation of justice. Kalinga Edict II of Ashoka declares: "All men are my children, and just as I desire for my children that they enjoy every kind of prosperity both in this world and in the next, so also, I desire the same for all men".[43]

IV. BHAKTI MOVEMENT

The period during 600-1700 AD saw the Bhakti movement in medieval India. Great saints all over India composed songs in praise of God in which they extolled virtues to be practiced by men such as compassion, charity, nonviolence, truthfulness and the spirit of brotherhood. The compositions of Kabir, Tulsidas, Rahim, Surdas, Chaitanya, Alwars, Nayanars bear eloquent testimony to human rights.

V. CONCLUSION

The concept of human rights has existed from the time human beings evolved. Although, the terminologies used for denoting them varied from tract to tract and age to age, the values represented by them have remained immutably the

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[42] Vinaya Pitaka, Cullavagga VI 4.9.

[43] R.R.Sethi & K.S.Narang, A History of Bharat 190-191 (1952).

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same from Vedic times till today. That they were part of scriptural duties made authoritative and acted upon as guidelines by the rulers in the administration of the state. The cardinal principles and seminal values underlying them have remained the same throughout the history of humankind.

The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, other international instruments and even the Indian Constitution evidence the same values, albeit, articulated in language specific to the constructs of time and tract. Parts III and IV of the Indian Constitution breathe these very values that are relevant to all humankind spanning times and cultures. Part IVA of the Constitution is a significant concession to the duty based society idea that permeates the history of human rights in India from Vedic to British times. Thus, one cannot accept the baseless criticism voiced in some quarters that the concept of human rights did not exist in India till the British gifted it to us.

Finally, as Kalidasa says in his immortal drama, *Malvikaagnimitra*, about literature:

> "*Puranmityewa Na Sadhu Sarven Na Chaapi Kavyam Navamitwaibadhdhyam*
> *Santah Parikshyanyatradbhajante Murah Parpratyayaneya-buddhih*"

['Everything is not good because it is old, nor is literature unblemished because it is new; wise ones examine it and accept it, but a fool is carried away solely by the thinking of others']

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