

BOOK REVIEW

Manoj Kumar Sinha, Implementation of Basic Human Rights, First Published in 1999, Second Re-print 2002 (Manak Publications, Pvt. Ltd, New Delhi-110092), pp. 438, Price Rs. 375.

Human rights are those natural rights which are given by the nature to the individuals for proper development of their personality. These rights are exercised by all human beings irrespective of their race, caste, nationality, sex language etc. Leading exponent of International Law Fawcett states, "Human rights are some-times called fundamental rights or basic rights or natural right. As fundamental or basic rights they are those which must not be taken away by any legislature or any act of government and which are often set out in a constitution. As natural rights they are seen as belonging to men and women by their very nature. Another way to describe them would be to call them 'common rights', for they are rights which all men and women in the world should share, just as the common law in England, for example the body of rules and customs which, unlike local customs governed the whole country".¹

Human rights has important place in the Charter of the United Nations. The Preamble of the Charter reaffirms faith in "fundamental human rights and the dignity and worth of human persons and in equal rights of men and women." It is one of the purposes of the United Nations to achieve "international co-operation in solving international problems of economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." Again, the U.N. Charter under Article 13(1) (b) lays down, "The General Assembly shall initiate studies and make recommendations for the purpose of promoting international co-operation in the economic, social, cultural, educational and health fields and assist in the realization of the human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

Article 55 proclaims, "With a view to the creation of the conditions of stability and well-being which are necessary for peaceful

¹ J.E.S. Fawcett, 'The Law of Nations' (Allen Lane, The Penguin Press London, 1968) p. 151.

and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, 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.” This provision is further supported by Article 56 under which "All Members pledge themselves to take joint and separate action in co-operation with the organization for the achievement of the purposes set forth in Article 55." Thus, Articles 55 and 56 direct the member States to observe and respect human rights and fundamental freedoms.

Articles 62 and 68 also reaffirm the commitment of the United Nations to “promote and encourage respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.” Thus, it may be stated that the human rights and fundamental freedoms have received an important place under the Charter of the United Nations.

On 10 December, 1948 the General Assembly of the United Nations adopted the Universal Declaration of Human Rights, 1948. This is treated as model form of human rights and fundamental freedoms. The Declaration has 30 Articles and a Preamble. It has made declaration about human rights and fundamental freedoms. Article 1 expressly declares, "All human beings are born free and equal in dignity and rights, they are endowed with reason and conscience and should act to one another in spirit of brotherhood."

On the basis of the Universal Declaration of Human Rights, the European Convention on Human Rights, 1950 was adopted by certain European countries. The Convention has established a Commission and a Court. The Convention has provided basic principles for the future development of human rights and fundamental freedoms. In 1966, the General Assembly adopted the Covenant on Economic, Social and Cultural Rights, the Covenant on Civil and Political Rights and the Optional Protocol to the Covenant on Civil and Political Rights.

The Covenants have extended the ambit and scope of human rights and fundamental freedoms stipulated in the Universal Declaration of Human Rights, 1948. The International Covenant on Economic, Social and Cultural Rights, 1966 came into force on January 3, 1976. The International Covenant on Civil and Political Rights, 1966 came into force on March 23, 1976. The Optional Protocol to the Covenant on Civil and Political Rights, 1966 came into force on March 23, 1976. The India has also ratified the two Covenants on March 23, 1976. The principles of human rights and fundamental freedoms stipulated in the Charter of the United Nations, the Universal Declaration of Human Rights, 1948 the International Covenant on Economic, Social and Cultural Rights, 1966

and the International Covenant on Civil and Political Rights, 1966 have internationalized and universalized the concept of human rights. They have widened the horizons of human rights and international law.

The present book covers all the important aspects of human rights and fundamental freedoms. The author has made a wide study regarding implementation of basic human rights. The whole work is divided into VII Chapters.

The chapter 1 is 'Introduction.' It introduces the subject. Here discussion has been made regarding the development of human rights in India and International Law. The author has discussed in detail promotion of human rights prior to the United Nations and within the United Nations. A comparative study of non-derogable rights at universal, regional and national levels have been made. The author has tried to study a relation between treaties and customary law and human rights protection

In chapter 2 the author has made a critical study regarding the non-derogable human rights. This chapter is divided into 8 sections. In section I the right to life as provided in International Covenant on Civil and Political Rights, 1966, the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, American Convention on Human Rights and African Commission on Human and People's Rights have been discussed in detail. The Section II deals with right against torture. The author has discussed right against torture as stated in the International Covenant on Civil and Political Rights, 1966, the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950, American Convention on Human Rights and other United Nations Instruments dealing with torture. In section III prohibition of slavery and servitude has been highlighted as provided in International Covenant on Civil and Political Rights, 1966 European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 and American Convention on Human Rights. In section IV a wide study has been made regarding freedom from retroactive criminal offences and punishment as has been given in various international conventions. In section V the author has made a vast study regarding various aspects of prohibition on imprisonment for non-fulfilment of contractual obligation as given in Article 11 of the International Covenant on Civil and Political Rights, 1966. Article 11 states: "No one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation." All human rights instruments except the Universal Declaration of Human Rights, 1948 and the African Charter of Human Rights contain this provision. However, only the International Covenant on Civil and Political Rights, 1966 has made this right as non-derogative right. In section VI the author has tried to cover all the important aspects of right to legal recognition as stipulated in International Covenant on Civil and Political Rights, 1966 and American Convention. The important aspects of the right to legal recognition are right

to a name, right to nationality, rights of the family and rights of the child. In section VII all aspects of freedom of thought, conscience and religion has been studied. The Section VIII deals with right to participate in government.

In Chapter 3 the author has made a detail study regarding implementation of non-derogable rights. This chapter is divided into 6 sections. The section 1 talks about implementation mechanism at international level as stipulated in Universal Declaration of Human Rights, 1948, the International Covenant on Civil and Political Rights, 1966 and Commission on Human Rights. The Section II makes discussion about Implementation mechanism available under the regional instruments. The author has made discussion about implementation mechanism available under the European Convention for the protection of Human Rights and Fundamental Freedoms and European Court of Human Rights. In section III the author has made a study about implementation of human rights under American Convention on Human Rights. In section IV implementation provisions under the African Charter on Human and People's Rights has been discussed. In section V the author has made study about implementation of non-derogable rights under Geneva Conventions of 1949 and the Additional Protocols of 1977. In section VI discussion has been made about role of non-governmental organizations in implementation of human rights at international and regional levels.

In chapter 4 the author has made wide discussion about implementation mechanism for non-derogable rights in the Indian system. He has discussed the importance of the Supreme Court, National Human Rights Commission, non-governmental organizations (NGOs) and media in protection and promotion of human rights and fundamental freedoms.

Chapter 5 is divided into 4 sections. In this chapter the author has made wide study about jurisprudence of non-derogable human rights at international level. In section 1 the study has been made about the human rights committee of the Covenant on the Civil and Political Rights, 1966. In section II study has been made about European Court of Human Rights and European Commission of Human Rights. In section III discussion has been made about the Inter-American Commission and Court of Human Rights. In section IV study has been made about jurisprudence of international humanitarian law.

In chapter 6 the author has made a critical study about jurisprudence of Indian judiciary and national human rights institutions. This chapter is divided into 2 sections. Section 1 deals with substantive rights like right to life, death penalty and torture and procedural rights like right to human dignity, handcuffing of detenués and right to bail, right to speedy trial and right to free legal aid. In section 2 a detail study has been about jurisprudence of National Human Rights Commission and State Human

Rights Commissions.

In **Chapter 7** the author has given a beautiful conclusion of the study. He has suggested that the new human rights structures eventually be secured by international acceptance of binding provisions for the adjudication of disputes implicating *jus cogens* and public order of the international community

It is important to note that Dr. Sinha has completed his Ph.D. Degree on this topic under the supervision of Professor V.S. Mani, an eminent scholar of International law. Later on, he improved it and published it in form of a book. Thus, it appears that he has devoted a lot of time on this subject. This is probably the model type of work which is published in form of book. The foreword of the book is written by the leading scholar V.S. Mani. In Foreword of the book, Professor V.S. Mani has made following beautiful observations about the book.

I am glad that Dr. Manoj Kumar Sinha chose this critical area of international human rights law for his doctoral inquiry, and that he succeeded in showing that despite the variance of state attitudes on diverse aspects of human rights, there is an irreducible minimum of human rights binding on all states, against which no arguments based on cultural, religious or economic diversities of national societies can have their sway, as no argument against the principle of human dignity.

I am happy that Dr. Sinha has been able to transform his doctoral thesis into a book form. I am sure that this will remain a substantial contribution to the world of human rights law, and inspire further similar studies on implementation of international norms of human rights. I congratulate him on the success of his venture and wish him and this academic child of his all the best.

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