

## **CHAPTER-IV**

### **GLOBALLY RECOGNISED HUMAN RIGHTS APPLICABLE IN COURT PROCEEDINGS**

As stated in the introductory chapter that the subject of study is recognition of human rights by subordinate courts. Therefore, a minute scanning has been done to identify the 'human rights' enumerated in the International Covenants, Conventions, Declarations and Protocols which relates to the proceedings of the court. Although the aforesaid covenants, conventions and protocols provide several facets of human rights, yet, the rights which have been declared by the international community and applicable to the proceedings of the courts are mentioned herein:

#### **IV.1 : UNDER THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948.**

Prior to the United Nations, provisions for safeguarding human rights had been written into many national constitutions, and certain rights in limited fields had been guaranteed in treaties. The United Nations Charter, however, goes further in its emphasis

on the general obligation of all the Members of the United Nations to provide and encourage respect for human rights, and in providing that machinery should be set up for this purpose<sup>1</sup>.

The Drafting Committee of the Universal Declaration of Human Rights held its first session at Lake Success, from 9 to 25 June 1947. In addition to a Draft Outline of an International Bill of Human Rights prepared by the Secretariat (E/CN.4/- AC.1/3 and Add.1), the Drafting Committee had before it the text of a letter from Lord Dukeston, the United Kingdom representative on the Commission on Human Rights, transmitting a draft International Bill of Human Rights and also a draft resolution which might be passed by the General Assembly when adopting the Bill (E/CN.4/- AC.1/4). These two documents were considered and compared by the Drafting Committee, together with certain United States proposals for the rewording of some items appearing in the Secretariat Draft Outline (E/CN.4/AC.1/8 and Rev. 1 and 2). The Draft Outline prepared by the Secretariat was a compilation of all the rights proposed either in international drafts, or contained in national constitutions or suggested by members of the Commission on Human Rights<sup>2</sup>.

Two views were put forward by the Drafting Committee regarding the form the preliminary draft Bill should take. Some representatives thought that the preliminary draft, in the first instance, should take the form of a declaration or manifesto; others felt that it should be in the form of a convention. A declaration or manifesto would be a recommendation by the General Assembly to Member States, and, as such, would have moral weight but no legal compulsion on Members. On the other hand, a convention would be legally binding on Members which accepted it. Its application, however, would be limited to the signatories. It was agreed by those who favoured the declaration that it should be accompanied or followed by a convention or conventions on specific groups of rights. It was also agreed by those who favoured the convention that the General Assembly in recommending a convention to Member States might make a declaration wider in content and more general in expression.

Ultimately, after the third round discussion and constitution of several sub-committees, the nations as a whole accepted the resolution that it would be a declaration and not convention or covenant. On its acceptance, the President of the General Assembly said that the adoption of that "very important Declaration by a big

majority without any direct opposition was a remarkable achievement . . . [that] the Declaration only marked a first step since it was not a convention by which States would be bound to carry out and give effect to the fundamental human rights; nor would it provide for enforcement; yet it was a step forward in a great evolutionary process. It was the first occasion on which the organized community of nations had made a declaration of human rights and fundamental freedoms. That document was backed by the authority of the body of opinion of the United Nations as a whole and millions of people, men, women and children all over the world, would turn to it for help, guidance and inspiration."<sup>3</sup>

The Universal Declaration of Human Rights, 1948 (herein after referred as the Declaration) is the standard setting international document relating to the protection of basic human rights and fundamental freedoms of the human being living in this universe. It is a part of the International Bill of Human Rights. It is the outcome of the nasty Second World War which mankind experienced for the first time in the world history. The General Assembly of the United Nations adopted the Universal Declaration of Human Rights on 10<sup>th</sup> December, 1948 by forty eight votes with eight abstentions. It was proclaimed as a common standard of

achievements for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall see by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among peoples of member states themselves and among the peoples of territories under their jurisdictions. This codified international document speaks about the following rights which are very much relevant for the subordinate courts in the day to day proceeding of any case before it:

**i. RIGHT AGAINST CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT**

Article 5 of the Declaration gives a mandate to the law implementing agencies including the courts that no person shall be subjected to torture or to cruel, or inhuman or degrading treatment or punishment. As stated above, human being carries human rights wherever he or she is. He is to be behaved and treated in a humane manner. He or she cannot be meted out or subjected to any form of inhuman or degrading treatment. The principle is equally applicable to the court, staff of the court, staff in the court lock-up, staff in the

jail, and escort party of the accused persons during trial. Even, if an accused person is convicted on his guilt, then also he is entitled to live with dignity, may be inside the jail. Similarly, the other persons coming to the court either as a complainant or as a bailor or as witness or assistant of the parties are also entitled to get human and good treatment from the court and its staff. Inhuman treatment or degrading treatment does not necessarily means physical torture. It entails within its ambit any misbehavior. Therefore, if a person who intends to know about the progress of his case, when his turn as a witness will come up, how to get the certified copies of the documents etc., how to get free legal aid is not given proper response then also it will amount to cruel and inhuman treatment to him. And, in such a situation human rights violation takes place.

## **ii. RIGHT TO HAVE HUMAN RECOGNITION**

Article 6 of the Declaration provides that every one has the right to recognition everywhere as a person before law. This indicates that the law implementing agencies including the subordinate courts are to treat every person irrespective of casts, creed, race, religion or place of birth the minimum protection of his rights and liberties. The courts of law cannot deviate from giving protection merely on the basis of national or foreigners, higher caste

or lower caste etc.. The court is to see that the living being before it is none but a 'human being' and thus, he is entitled to the rights to which he is entitled. The court and its staff cannot see the persons before the court with a discriminating eye.

### **iii. RIGHT TO EQUALITY**

Article 7 of the declaration provides that all are equal before the law and are entitled to without any discrimination to equal protection of the law. This Article also provides that all are entitled to equal protection against any discrimination. Thus, it is a mandate and universally recognized right that whoever approaches the door of law ventilating grievances must be given equal treatments irrespective of his cast, creed, race or religion. There cannot be any discrimination on the aforesaid basis.

However, the concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. According to Lord Dennings "equality before law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and

be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinction of race, religion, wealth, social status or political influence.

**iv. RIGHT TO HAVE EFFECTIVE REMEDY**

Article 8 of the declaration states that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law. Thus, it is clear that commensurating to the above provisions pertaining to equal protection and equality before law of a human being without any discrimination whatsoever, everyone has the right to have access to the justice delivery system for getting effective remedies.

*Ubi jus ubi remedium* is a cardinal principle in a civilized society governed by rule of law, more particularly upon the justice delivery system. Under the above provision it has become the bounded duty of the state that the grievance of a person does not go un-redressed. Secondly, the remedy must be an effective one and not just for consence. The remedy may consist of punishment of the wrong doer in appropriate cases, may be compensation to the victims, may be reparation of the damages, may be rehabilitation of

the victims and so on. Thus, to be an effective remedy the court of law is to see that the party coming to the court is satisfied on the relief given to him. The present study is dedicated on this area and the details are highlighted in the last two chapters.

#### **v. RIGHT TO PERSONAL LIBERTY**

Article 9 of the Declaration provides that no one shall be subjected to arbitrary arrest, detention or exile. This is one of the most important rights which is required to be ensured to the people living in the earth. And very purposefully, by this provision, the state authorities particularly, the investigating agencies are reminded to see that no person is arrested without any justifiable reason and the judiciary is reminded to see that no person is detained without any justifiable ground.

Liberty of a person is sacrosanct. The person's right to move freely without any hindrance or obstacles from the other is his basic right. This right is essential for the personal development of the person concerned. However, if a person violates the law of the land, then his liberty of free movement can be curtailed. The curtailment of the liberty is governed by the procedural law. It cannot be curtailed whimsically. In our country the police, other investigating agencies, court even in certain occasion private individual has the

right to arrest a person if he has committed a cognizable offence or there appears reasonable apprehension that he has committed the offence or that he is an absconder. It will be the solemn duty of the court to see as to whether the person who is produced before him was unnecessarily arrested or detained in police station. At the same time, the court is to see whether the further detention in judicial custody is really required or not. The court is required to apply its mind before passing any order of detention in as much as once the person is detained without any justifiable reasons or authority of law, his right cannot be given back to him.

**vi. RIGHT TO FAIR TRIAL**

Article 10 of the declaration states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him. This article mandates that whoever and whenever a person knocks the door of the courts of law, fair and impartial justice should be ensured to him or her. The provision gives emphasis on criminal cases in as much as in criminal proceedings, the results may hamper the personal rights and liberties of the person. Therefore, the courts of law are to be serious in this regard.

Fair trial includes, amongst others, to know about the charges against him or her; to get the copies of the materials that are supposed to be used against him or her during trial; to have his voice in defence reached before the court and so on. The Article provides not only fair trial but also trial by an impartial court. This is important. This indirectly provides that if a person thinks that he will not get justice in a particular court, then he should be given the right to get his case tried by another court.

**vii. PRESUMPTION OF INNOCENCE IN CRIMINAL TRIALS**

Article 11 of the declaration states that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. This Article prohibits the courts of law to draw any negative inference against the accused person facing trial. The principle of law ordained herein is that whatever may be the charge against the accused person, he is to be presumed as innocent until he is convicted by a competent court and the same has been upheld by the final court after proper scrutiny.

This provision is universally applicable and acceptable principle since human civilization. A person when brought to trial before a competent court may not commit the offence as alleged or that he may commit the alleged offence due to the circumstances faced by him. As for instance if a person commits murder for his self defence law may not punish him. Secondly, the burden of proving the fact that the person charged committed the offence is always on the prosecution. The prosecution is required to prove the charge in accordance with the law. Therefore, the law enforcing agencies including the courts are reminded by this Article not to take any adverse inference against a person who is brought before it on a criminal charge.

**viii. NON APPLICATION OF *EX POST FACTO* LAW**

The second part of Article 11 of the declaration states that no one shall be held guilty of any offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when the offence was committed. Nor, shall heavier penalty be imposed than the one that was applicable at the time the penal offence was committed. This article *inter alia* provides that the penal statutes cannot have retrospective effects. Therefore, an act or omission which was not punishable at

the time of its commission cannot be made punishable even if law is made subsequently providing punishment for that that earlier act or omission.

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## REFERENCES

1. United Nations Information Organization. Documents of the United Nations Conference on International Organization, San Francisco, 1945 (published in co-operation with the Library of Congress). Vol. 6, p. 456.
2. *ibid.*
3. Year Book of United nations 1947-48 p 576-78.
4. Alfred Thompson "Tom" Denning, Baron Denning, [OM](#), [PC](#), [DL](#), [QC](#) (23 January 1899 – 5 March 1999), commonly known as Lord Denning, was a British lawyer and judge. He gained degrees in mathematics and law at Oxford University, although his studies were disrupted by his service in the First World War. He then began his legal career, distinguishing himself as a [barrister](#) and becoming a [King's Counsel](#) in 1938. Denning became a judge in 1944 with an appointment to the [Family Division](#) of the [High Court of Justice](#) and was made a [Lord Justice of Appeal](#) in 1948 after less than five years in the High Court. He became a [Lord of Appeal in Ordinary](#) in 1957 and after five years in the [House of Lords](#) returned to the Court of Appeal as [Master of the Rolls](#) in 1962, a position he held for twenty years. In retirement he wrote several books and continued to offer opinions on the state of the [common law](#) through his writing and his position in the [House of Lords](#).

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