

FUNDAMENTAL RIGHTS Vis-a-Vis ⁷⁴ANDHS NEED FOR AN ENACTMENT

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Human Rights are as old as human history. They are practised in utmost all the societies in one form or the other. However, the reliance on human rights as a tool to protect the dignity of the human being is only of recent origin.

Human Rights can be defined as those rights which every individual possesses because one is a human being. In other words, they are the inalienable rights or natural rights of the members of a human family.

From the origin of human life on this planet, Man had underwent through a horrendous journey to establish an institutionalised political and social order. All through this historical journey the importance of development and expression of individual personality began to acquire material significance in relation to the community. In the repeated interaction between the individual and the State, the urge to recognise a Charter of basic individual rights has expressed itself in a continuous struggle. In this long drawn battle fought by Man against the power of established authority has finally

culminated in the reaffirmation and evolution of the basic human rights of the individual.

In the long checkered human history, the road travelled by human rights movement has been historic and quite impressive. With its origins in medieval Europe, especially since the enactment of Magna Carta in 1215 various States started recognising and extending special protection of fundamental human rights of the citizens in their constitutions.

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The widespread recognition of fundamental basic rights of Men in the constitutional laws by many States have had their own ramifications on the international

community. Accordingly, the United Nations Charter too has affirmed faith in 'fundamental human rights' and in the dignity and worth of human person. In that direction to further strengthen the concept of human rights on December 10, 1948, the United Nations General Assembly unanimously adopted the Universal Declaration of Human Rights.

Although the General Assembly adopted the declaration, it has no legal validity and not binding upon the States. Further, the declaration is a mixture of both the aspects of civil and political and social cultural and economic rights. Hence all the rights enumerated in the declaration are not enforceable in the eye of law. In view of the non-enforceability of the rights and to accord legal impetus to it in the year 1966, the General Assembly of the United Nations adopted two independent Covenants. They are (a) the Covenant on Civil and Political Rights (otherwise referred to as justiciable rights) and (b) the Covenant on Economic, Social and Cultural Rights (otherwise referred to as non-justiciable rights).

After receiving the required number of ratifications by the States Parties, both the Covenants came into force in the year 1976. In the contemporary era, human rights are the prime concern of municipal law as well as international law.

The concept of human rights or fundamental rights is not an unfamiliar one in the India scenario. An inquiry into the Smurits, Srutis, Dharmasastras and other texts undoubtedly reveal the importance that has been attributed to the promotion and protection of human rights from the ancient times. Thus the ancient traditions and practices of protecting the rights of the individual have automatically become a part and parcel of the nationalistic movement of India in its struggle for freedom. The struggle for fundamental freedoms and economic justice was an integral part of our freedom movement. The leaders of India even prior to independence have recognised the principles of human rights and committed themselves to their adoption. Right from the adoption of Swaraj Bill by Bal Gangadhar Tilak in 1895, the Indian National Congress on various occasions had adopted several resolutions highlighting the importance of fundamental rights in the future Constitution of India.

Taking into consideration of the rich cultural heritage values and the motivational forces of the national struggle, the

Constitutional framers automatically adopted a bill of rights in the Constitution of India, guaranteeing the fundamental freedoms of the individual on the similar lines of the Universal Declaration of Human Rights. Further, in view of the special problems of minorities and the need to assure them of the fullest protection of their rights, a charter of fundamental rights have been incorporated in the Constitution along with the socio economic and cultural rights. Thus the Constitution of India had been developed on the school of thought of individualism guaranteeing the rights of the individual against the Acts of State. Accordingly, the justiciable and non-justiciable human rights of the Universal Declaration were incorporated in the Constitution as 'Fundamental Rights' and 'Directive Principles of State Policy' with a hope and expectation that one day the tree of true liberty would bloom in India.

The Fundamental Rights incorporated in Part III, the Directive Principles of State Policy in Part IV, and the Fundamental Duties in Part IV-A (added subsequently) constitute as the fundamental principles of the Constitution in fulfilling the objectives of the Preamble of the Constitution. As one of the champions of human rights in the international arena and to discharge its Constitutional obligations, in the year 1993, the Government of India enacted the Human Rights Protection Act to

provide for a speedy and fair redressal to the victims for the violations of human rights. Accordingly, in the year 1994 a National Commission on Human Rights was established empowering it to deal with the violations of human rights.

But at the same time any critical study on the functioning of the Indian Polity in the last fifty years clearly depicts that its tract record is far from satisfactory in fully protecting the fundamental rights and in upholding the human dignity of the individual, in spite of the continuous active role played by the judiciary in implementing the law of the land in letter and spirit. The assertion of caste, ethnicity, resurgence of religious chauvinism, communalism and the linguistic issues etc., with their disastrous consequences seemed to suggest a certain fragility that could be hurtful to the fundamental rights.

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Above all, the new concept of calling 'Bandhs' frequently by different groups with the

blessings of their political bosses for their selfish interest really became an hazardous threat not only for the nourishment of an individual's life and liberty in securing their fundamental freedoms but to the public life of the Nation as a whole. It is an unfortunate situation that even after five decades of democratic governance the people of India have to look forward to the Legislature to shower its mercy through another legislative device to protect their basic fundamental rights of life and liberty from the inimical activities of the monomaniac groups of the country.

The concept of a bandh is a new phenomenon not only in India but in a democratic governance also. It also differs from the established concepts such as a satyagraha, protest, street assemblies, general strikes or a hural which are part of democratic society in expressing their dissatisfaction with respect to a specific issue or incident.

The word 'Badh' is the Hindi Version of the Sanskrit term 'Bandha' which has originated from the root of 'Bandh' which literally means 'tying or closing in protest of some demand'. Accordingly, it can be interpreted that all human activities have to be closed or blocked whenever a bandh is called for. In other words, the daily routine activities of the

individuals of a society come to a standstill if an organised group, an organisation, or a political party calls for a bandh. These bandhs are often vary in their nature depending upon the circumstances and the intentions of the callers of a bandh. They may be either local, regional, Statewide or nation wide. The enforceability of a bandh depends upon the strength of the callers. In general these bandhs are called by issuing a notice to the public in advance. However, at times it is observed at a short notice or even spontaneously depending upon their demand or situation according to the wishes of their political leaders.

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During the period of bandh the citizens are expected not to take part in any activity which they are supposed to perform habitually or according to their free will. Any attempt to go against the call for the bandh would ultimately result in danger to life or property. Even if there is no express or implied threat in life or property to those who are not in sympathy with the bandh, there is a clear menacing psychological fear instilled into

the minds of the citizens by a call for a bandh which precludes them enjoying their fundamental freedoms or fundamental rights. Accordingly, it can be stated that the intention of the callers of a bandh is to prevent the people from discharging their daily normal or emergent duties either official or personal. Obviously this amounts to a negation of rights of the citizens to enjoy their natural or fundamental freedoms and rights. The ultimate result of a bandh is to loose a full working day and incurs in loss on the exchequer which in turn affects the economy in the long run. There is no doubt, that mass protests, demonstrations and general strikes form part of a democracy, if they are not harmful in their nature. But disapproval will come, when there is an overdoes of protests calculated to hold the people to ransom and to bring the social life to a virtual standstill with more tidal regularity than they can endure. Bandhs and general strikes in the form of a bandh would certainly degenerate into an intolerable tyranny of an organised multitude against the unorganised citizens. For fear of violence shopkeepers down their shutters, citizens are forced to remain indoors. educational institutions and governmental and private sector offices and corporations either function with reduced strength or do not function at all. Transportation is suspended. By evening the patronisers of a bandh would make high sounding statements, their call for a bandh was

successful and their demand is justified legally with the support of the non participation of public in their daily activities.

The fact is that life becomes paralysed only because of the public's fear of reprisals by rowdy elements. As stated earlier, if any one tries to defy the extra-legal activities of the sponsors of a bandh, they have to face the wrath of it. They go even to the extent of indulging in obscene activities which are in derogatory nature towards the dignity of women and the privacy of an individual.

The sponsors of a bandh often claim that their actions are only in accordance with the provision of the Constitution. They often cite Article 19 (1) of the Constitution of India as a defence to support their cause of calling a bandh and as a part of democratic governance. It is true that in accordance with Art. 19(1), all the citizens are free to assemble peacefully without arms and to hold public meetings and express their dissent with regard to a particular issue. But this right does not permit anybody to misuse it. This rights has to be exercised with due care and caution along with the restrictions that it specifies. They are security of State, Public Order, Decency and Morality, Defamation, Incitement of offence and sovereignty, and, the Integrity of India. If a bandh or a general strike endangers any of the above aspects it is a clear violation of the provisions of the Constitution. Further, according to Article 51

A of the constitution, it is the primary responsibility of every one to discharge their fundamental duties first and foremost than claiming for their rights. Strictly speaking in the legal sense, for every right there is a corresponding duty. Unfortunately, the fundamental duties right from their incorporation in the Constitution in 1976, have become only an ornamental ideals of the Constitution than to their adherence.

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Of late, the callers of a bandh started adopting new strategies to escape from the clutches of law and to justify their activities under the Constitution, since the judiciary declared the bandhs illegal and unconstitutional. Very recently (i.e. on December 11, 1998), the National Platform of Mass Organisation (NIPO) gave a call for a nation wide one day

general strike in protest against the style of functioning of the BJP Party that is in power in the Centre. Though it is named as a general strike to escape from the clutches of the legal provisions, it is nothing but a bandh. The very statement made by the organisation that only essential services are exempted from the general strike clearly signifies the nature of the strike is illegal. If the motive of a strike is to compel anybody to fall in line with that of the callers and to achieve their objective not by peaceful means will certainly constitute as a crime against the society. Further the callers of a bandh or a general strike claim that such calls are part of the democratic governance. However, it is submitted that a democracy rests on three basic principles. Firstly, it lays greater emphasis on the development of the individual than on the growth of a community. The success of any civilisation or the efficiency of any government should be judged in terms of the scope it affords for the development than on its policies and functioning. Secondly, the important principle of a democracy is freedom as fostering the tender plant of individuality. Freedom is the life breath of the individual and is the thing for which the individual lives.

Finally, the right to life and personal liberty of an individual is the ultimate goal of a democracy. The right to life and liberty is not merely confined to physical existence. It would

include within its ambit the right to live which would go to make a man's life meaningful and worth living. It would also include the right to livelihood. In the words of Dr.S.Radhakrishnan, "Democracy is not merely a form of Government, it is a way of life, an act of faith in the dignity and freedom of the individual".

If these are the real objectives of a democracy, it is clear that bandhs, mass demonstrations, or general strikes or gheraos endangering the normal civic life are outrages on the principles of democracy, a transgression of law, and, violation of the Constitution. Whenever such type of outrageous activities are committed it is the duty of Executive or the law enforcing agencies to step into defend the laws and to protect the millions of the peoples rights.

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But unfortunately,, the Executive instead of extending protection to the people turn a blind eye and put the lives of the ordinary citizens at risk. Because most of these bandhs, demonstrations and general strikes are either called at the

behest of the political parties or at times by the Government itself. In such a situation, the law enforcing agencies too meekly submit themselves to the political parties in power and turn a napoienic eye in protecting the fundamental rights of the citizens those who do not want to participate in a bandh or a general strike.

In this kind of scenario, though the judiciary is taking a leading role in protecting the victims of the violations of fundamental rights, it is beyond its jurisdiction to rescuse the victims without the support of the Executive or the law enforcing authorities. Because, whatever pronouncements it may deliver, if the party in power or the government does not have the will to implement them, they become simply of academic importance than to crystallize into reality.

In the glazxy of vicious circle of politicians, rowdies and gundandhas and other subterranean groups, the citizen is bewildered and finds himself like an Alice- in Wonderland and not knowing which way to turn and to whom to get the counsel from. Most of the victims of these bandhs and strikes have managed to reach their graveyards in silence, even though their fundamental rights are protected and guaranteed by the constitution. At this juncture, it is now time for the legislature to wake up from its slumber to enact a legislation to uphol the rule of

law, guarantee the citizens to exercise their fundamental rights freely and to save the democratic governance of the country from the inimical activities of the fanatic groups of the country.

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Dr.S.Radhakrishnan

There is no doubt that India is ahead of many other countries in implementing the justiciable and non-justiciable human rights as a party to both the covenants on human rights. But at the same time it is also true that due to the selfish motives of the political parties to continue in power or to come to power leading to a gross violation of the fundamental rights, rather, human rights very often. In fact if a bandh or a general strike or a demonstration of violent in nature is called for, at times even the Executive also becomes helpless. In a Federal State like ours, wherein so many groups and political parties are there, it is not always possible for the State to enforce law and order in its strict sense. Further though the judicial pronouncements are made on the name of public interest without a proper law, there is every possibility for the executive to plead excuse for the lapses on its part. Hence, it is the duty of the Legislature to enact a legislation to protect the basic

rights of the citizens and to secure a social order which will promote the welfare of the people as stated in the Directive Principles of State Policy. If the Legislature is ready to make a legislation it should be based on the following lines.

1. The Bandhs, general strikes or demonstrations which are violative in their nature should be banned completely. If any body defy the provisions of the enactment, they must be punished under the provisions of the criminal law of the country as grave crimes against humanity.
2. The fundamental duties should be delinked from the Directive Principles of State Policy and separate status must be accorded by amending the Constitution.
3. According to Section 29 of the Representation of the Peoples Act 1951 all political parties undertake that they will abide by the provisions of the Constitution of India and follow the principles of socialism, secularism and democracy and would hold the sovereignty, unity and integrity of India at the time of their registration with the Election Commission of India. But in practice altogether we witness a different picture and role played by the political parties or their affiliated wings. In accordance with the above provisions of the Representation of the Peoples Act, if any political party calls for a bandh or a general strike in the nature of a bandh or associates in

any manner, such parties and their outfits must be derecognised permanently.

4. As was highlighted by the Madras High Court if any of the employees of either private or public sector participates in a bandh they should not be paid wages for that day, and, disciplinary proceedings should be initiated.
5. If the law enforcing authorities fail to respond in discharging their duties in protecting the rights of the citizens appropriate provisions to be incorporated to initiate disciplinary proceedings against such officers those who derelict their basic duties.
6. The Union and State Governments should be desisted to sponsor bandhs or general strikes which may endanger the life of the people of the polity.
7. As stated by the Kerala High Court, the callers of a bandh or general strike should be made responsible to pay compensation to the government and to the public and private citizens for the destruction of public and private property and intruding into the privacy of the individual. For this purpose suitable mechanism has to be evolved and the government must be made responsible to recoup such losses from the organisers.
8. The Human Rights Commission has to be empowered to try cases of violations of human rights arising out of this type of public atrocities or Criminal Injuries Compensation Courts to be established in every State on the lines of the Consumer Courts to deal with this type of cases. The establishment of this type of courts not only reduce the burden of judiciary but also helps victims to render speedy justice.
9. The State owned transportation sectors must be equipped with adequate police protection to run the vehicles, trains and flights on such days instead of canceling them on the pretext of lack of security. In case if the authorities of these sectors want to regulate the vehicular movement, the passangers should be provided with all the facilities at no extra cost than what they actually pay.
10. Provisions have to be made to fix responsibility on those who call for bandhs and should be made responsible to compensate for the loss of livelihood of the daily wage earners.

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Let us hope that the Legislature will at least enact a law, honour on before January 26, 2000 the day the Constitution successfully completes fifty years of its existence from the date of its adoption (i.e. January 26, 1950) by the Constitutional fathers with an aim to uphold the dignity and freedom of the individual.

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"All things, all men and all events are interrelated and 'interdiffused'. All life is one, though its perishable forms are innumerable. Whether this 'life' be viewed as Suchness, or the Void or as the Essence of Mind, it is a factor comments all forms. It follows that all the three forms are intimately interrelated, whether the links be seen as cause-effect, in that every cause must affect every other form, or as compassion, the twin Wisdom in Buddhist thought-out, which springs from the flame of the wisdom in each heart which knows all life as one and acts accordingly."

-The Wisdom of Buddhism (ed.Christmas Humphreys), Curzon Press Ltd., Second Ed. (1979), p.91



"In the Universal Declaration of Human Rights (December 1948) in most solemn form, the dignity of a person is acknowledged to all human beings; and as a consequence there is proclaimed, as a fundamental right, the right of free movement in search for truth and in the attainment of moral good and of justice and also the right to a dignified life."

-Pope John XXIII, 1881-1963
Pacem in Terris, 1963

