

TRANSFORMATION OF HUMAN RIGHTS REGIME VIS-À-VIS INDUSTRIAL DEVELOPMENTS

Bhumika SHARMA¹

Snigdha KURIYAL²

ABSTRACT

In the post-industrial world, life is different by virtue of new life-style, advanced methods of work and employment, global relations and so on. In 1948, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations. The document is inclusive and embraces all significant rights of humans. Certain rights are indirectly included or covered under the Declaration. In the light of new socio, economic and legal developments, more expressed rights for humans need to be included in the international document. The present world has moved further and has started recognising the rights of nature. The judiciary in various countries has played a pro-active role in implementing as well as carving out new rights in favour of non-humans such as rivers, robots etc. The inalienable rights must be formulated for animals, robots, etc. in addition to the human rights. The United Nations should adopt the unofficial Declarations relating to express human rights such as Rights on Internet, Sexual Rights, etc. along with Declarations focusing on rights of animals, rivers, etc.

Key Words - Animals, human rights, judiciary, robots.

1. INTRODUCTION

The Preamble to the United Nations Charter states- “We the peoples of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ...” Universal Declaration of Human Rights ,1948 is among the most important documents of the 20th century. It was proclaimed as a common standard of achievement for all peoples and all nations. It was adopted with the aim that every individual and every organ of society shall strive by teaching and education to promote respect for these rights and freedoms. It envisions progressive measures, national and international, to secure their universal and effective

¹ Assistant Professor, School of Law, Sharda University, Greater Noida, India

² Assistant Professor, School of Law, Sharda University, Greater Noida, India

recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction. It has been translated over 523 different languages.³ It has acquired a moral and political significance matched by few documents. It provides both a guide to present action and an evolving set of ideas for future implementation at the national level. Increasingly, the principles of the Universal Declaration of Human Rights have been embodied in what States do. They serve as the foundation for the International Bill of Rights and several other crucial human rights agreements.⁴ The universal nature of human rights has been affirmed under the Declaration, regardless of any difference of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁵ It is comprehensive in nature, endowing individual social, economic and political rights. As early as in 1948, right to privacy was recognised as a human right.⁶ These human rights are interdependent and indivisible. All of the 30 articles in the Declaration are equally important. Nobody can decide that some are more important than others. Taking away one right has a negative impact on all the other rights. A visionary document has become a living reality and it should be celebrated for its firm foundation and flexible structure.⁷

The present times call for a dynamic instrument or a combination of instruments recognised the evolving rights of humans in expressed form – rights relating to cyberspace, sexual rights etc. Simultaneously, the personhood extended by the Courts worldwide and the legislature in some countries to environment, animals etc. must become a norm.⁸ Against this backdrop, the present article is an attempt to discuss the companions of humans, whether living or non-living, who are also entitled to some rights in the post-industrial society. For this purpose, the article shall explore the legal developments in different countries touching the rights of non-humans.

³ For details, see <https://www.ohchr.org/EN/UDHR/Pages/Introduction.aspx>. It is translated into hundreds of languages and dialects from Abkhaz to Zulu. It has set Guinness World Records in 1999 for being the most translated document in the world at 298 languages. The updated record in 2009 reached 370. At present, the languages touch 524 languages.

⁴ Some of them are - The International Convention on the Elimination of Racial Discrimination ,1965 ; The International Covenant on Economic, Social and Cultural Rights, 1966); The International Covenant on Civil and Political Rights; 1966; The Convention on the Elimination of All Forms of Discrimination Against Women, 1979; The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 and The Convention on the Rights of the Child (1989).

⁵ Article 2 of the Universal Declaration of Human Rights ,1948 provides for equality to all.

⁶ Article 12 of the Universal Declaration of Human Rights ,1948.

⁷ Claude Welch, “Universal Declaration of Human Rights: Why does it matter?”, available at http://www.buffalo.edu/ubnow/stories/2015/12/qa_welch_udhr.html.

⁸ The traditional theory has granted the legal personality to the artificial persons such as a company or a trust. Later, same was extended to Gods and idols etc. Now a change is underway and rights of personhood are extending, regardless of natural person.

2. DEVELOPMENT OF HUMAN RIGHTS IN MODERN TIMES

The many decades old Declaration is comprehensive dealing with array of rights and duties. The Charter of Emerging Human Rights arises from the experience and voices of the global civil society at the beginning of the 21st century. This Charter involves a new conception of citizen participation and conceives the emerging rights as citizen rights. The aim is to overcome the political deficit and the powerlessness between the desired changes and the present precarious conditions for their achievement. It takes shape as a response to the globalisation processes. The right to egalitarian democracy; right to peace; the right to inhabit the planet and to the environment; right to a full and effective equality of rights; the right to pluralistic democracy; right to parity democracy; right to participatory democracy; right to solidarity democracy; right to garantiste democracy are provided under the Charter.

The Universal Declaration of Emerging Human Rights (UDEHR) is a programmatic instrument of international civil society aimed at state actors and other institutional forums for the crystallization of human rights in the new millennium.⁹ The Declaration's point of departure is the idea that civil society plays a fundamental role in facing the social, political, and technological challenges that contemporary global society presents. It recognises and is inspired by the spirit and principles of the Universal Declaration of Human Rights of 1948 and by international and regional instruments adopted to date by the international community. The principle of human security; the principle of non-discrimination; the principle of social inclusion, the principle of coherence; the principle of horizontality; the principle of interdependence and multiculturality.; the principle of gender, the principle of political participation, the principle of common responsibility and the principle of justiciability are the principles under the said Declaration.

Express recognition of Sexual rights¹⁰ offers an approach that includes and goes beyond protection of particular identities. International Planned Parenthood Federation¹¹ Declaration on Sexual Rights recognises that access to sexual and reproductive health is a fundamental human right, and that sexual health cannot be obtained or maintained when people are denied freedom, equality, privacy, autonomy, integrity, and dignity.¹² It was adopted in 2018. The

⁹ Available at

<https://static1.squarespace.com/static/5a36f1400abd0420bf59145f/t/5a9838664192026eb802291a/1519925353611/Charter+of+emerging+human+rights.pdf>.

¹⁰ For details, see Bhumika Sharma, "Woman's Sexuality - Evolving Paradigm", *Contemporary Social Sciences*, Jan-Mar. 2019 at 31-43; Bhumika Sharma, "Expanding Sexual Revolution: A Need for Holistic Sexual Education", *The '19 (1) a*, Vol. 3, Issue 1, 2017 at 43-53.

¹¹ It was formed in 1952, champions sexual and reproductive health and rights for all, especially the under-served.

¹² It is built on the International Planned Parenthood Federation's Charter of Sexual and Reproductive Rights.

Declaration sets out the seven guiding principles for the sexual rights. Marginalized groups such as young people, transgender people, sex workers, men having sex with men, people who are gay, lesbian or bi-sexual, child brides and girl mothers deserve protection. Access to sexual health care for prevention, diagnosis and treatment of all sexual concerns, problems and disorders amongst others. The right to education and information generally and to comprehensive sexuality education and information necessary and useful to exercise full citizenship and equality in the private, public and political domains; right to accountability and redress; etc. are the primary rights.

Cyber-security and freedom of expression on internet without the fear of arrest by government are continuously urged to be included within the framework of the human rights.¹³

3. NEED TO CONFER RIGHTS TO ALL

At a point where the human lives are surrounded, governed and sometimes dependent upon machines and electronic devices, it becomes a matter of discussion whether only humans alone have the inherent rights. The humans make use of animals for variety of purposes and until recently animals were considered insentient beings. The 16th Sustainable Development Goal's (SDG) - Target number 16.7 expects countries to “*ensure responsive, inclusive, participatory and representative decision-making at all levels*”. The inclusion of nature, its participation and representation at all levels is essential. This calls for safeguarding the rights of various constituents of nature – animals, birds, rivers and others. These are certainly living entities , lacking the ability to put forth their rights.

3.1 Rights of Animals, Birds, etc.

The Declaration of Animal Rights - a project of international animal rights and planet conservation group ‘Our Planet’ was drafted in May 2011 and publicly read and signed on June 3rd 2011, on the 1st National Animal Rights Day in the US, in New York. The Declaration was copied onto a large scroll of paper, which since then has been traveling the world and collecting people's signatures, drawings and notes.

¹³ For details, see Charter of Human Rights & Principles for the Internet, available at <https://www.ohchr.org/Documents/Issues/Opinion/Communications/InternetPrinciplesAndRightsCoalition.pdf> ;

In 2015, Judge Elena Liberatori ruled her Argentina's first “nonhuman person”- Sandra, an orangutan¹⁴ with the right to liberty, whose captivity and exhibition violated that right. The court ordered Sandra to be moved to a sanctuary.

In *Animal Welfare Board of India (AWBI) v. A. Nagaraja and Ors.*¹⁵, it was held by the Hon'ble Supreme Court of India that animal welfare laws have to be interpreted keeping in mind the welfare of animals and species best interest subject to exceptions out of human necessity.¹⁶ Lordships have also held that every species has an inherent right to live and shall be protected by law, subject to the exception provided out of necessity.¹⁷ Lordships have further held that so far animals are concerned, “life” means something more than mere survival or existence or instrumental value for human beings, but to lead a life with some intrinsic worth, honour and dignity.¹⁸ Animal has also honour and dignity which cannot be arbitrarily deprived of. Lordships held that Article 51 (g) and (h) are magna carta for protecting the life of animals.¹⁹ Right to dignity and fair treatment is, therefore, not confined to human beings alone, but to animals as well.²⁰ Right, not to be beaten, kicked, over-ridder, overloading is also a right recognized by Section 11 read with Section 3 of the PCA Act.²¹ Animals have also a right against the human beings not to be tortured and against infliction of unnecessary pain or suffering.

In *People for Animals v. MD Mohazzim and another*²², it was held that running the trade of birds is in violation of the rights of the birds. They deserve sympathy. Nobody is caring as to whether they have been inflicting cruelty or not despite of settled law that birds have a fundamental right to fly and cannot be caged and will have to be set free in the sky.

In *Narayan Dutt Bhatt v Union of India & Others*²³, the petition initially filed to regulate the movement of horse carts between India and Nepal before the High Court of Uttarakhand. The

¹⁴ Around the world, orangutans are still used as entertainment objects at venues where they dress up, have boxing matches, or pose for paid photos with tourists.

¹⁵ (2014) 7 SCC 547, 2014(6) SCALE 468.

¹⁶ *Id.*, Para 12.

¹⁷ *Id.*, Para 62.

¹⁸ *Id.*

¹⁹ *Id.*, Para 56.

²⁰ *Id.*, Para 62.

²¹ *Id.*, Para 32.

²² CrI. M.C. No.2051/2015, decided on 15 May,2015.

²³ 2018 SCCOnLine Utt 645.

Bench enlarged the scope of the P.I.L. on its own and granted legal personhood to “the entire animal kingdom”.

In *Karnail Singh and others v. State of Haryana*²⁴ the High Court of Punjab and Haryana recognized all animals in the animal kingdom, including avian and aquatic species, as legal entities. All citizens of the state of Haryana were declared persons *in loco parentis* (in place of a parent), which will enable them to act as guardians for all nonhuman animals within the state of Haryana.

In August 2020, People’s Charioteer Organization (PCO) & Another v. Union of India & Others²⁵, another petition has been filed before the Hon’ble Apex Court. The petitioner claimed that the bestowing the status of “Legal Personality/Entity” should be construed as extending of the rights of a living person to the animal kingdom and should solely be considered for the purposes of halting the “Animal Cruelty” as defined under the Prevention of Cruelty to Animals Act, 1960.²⁶ Legal personhood elevates an entity’s status under the law and confers legally recognizable interests, which are specific to the needs and nature of that entity.²⁷ “Animals” are a diverse group, with varied capacities, and different societal uses, legal personhood would look different for different species of animals, based on what they need to thrive.²⁸

3.2 Rights of Water Bodies and Forests

Environmental personhood is not a new concept and has been in existence even in the earlier centuries. The Southern California Law Review published law professor Christopher Stone’s seminal article, “Should trees have standing – toward legal rights for natural objects.”²⁹ It has been debated over the last few decades and gaining momentum.³⁰

In *Sierra Club v. Morton*³¹, Justice Douglas expressed the dissenting opinion that “contemporary public concern for protecting nature’s ecological equilibrium should lead to the conferral of standing upon environmental objects to sue for their own preservation.”

In 2006, the Tamaqua Borough of Schuylkill County, Pennsylvania, passed a sewage sludge ordinance that recognizes natural communities and ecosystems within the borough as legal

²⁴ 2019 SCCOnLine P&H 704.

²⁵ Filed on 10th August, 2020.

²⁶ Id, Para 56 of the Petition.

²⁷ Id, Para 57.

²⁸ Id, Para 58.

²⁹ Stone has described how under the existing structure of law, nature was considered right-less, having no legally recognized rights to defend and enforce.

³⁰ For details, see C. Cullinan, “If nature had rights”, Orion Magazine, Jan.-Feb. 2008.

³¹ 405 U.S. 727 (1972).

persons for the purposes of enforcing civil rights.³² It also strips corporations that engage in the land application of sludge of their rights to be treated as “persons” and consequently of their civil rights.³³ Now the borough or any of its residents may file a lawsuit on behalf of an ecosystem to recover compensatory and punitive damages for any harm done by the land application of sewage sludge.³⁴ Damages recovered in this way must be paid to the borough and used to restore those ecosystems and natural communities.³⁵

In September 2008, the people of Ecuador voted in support of the proposed Constitution; hence, Ecuador became the first country in the world to recognize the Rights of Nature in its national constitution.³⁶

“All rivers are sacred, living entities possessing their own fundamental rights including the right to flow and the right to legal standing in a court of law.”³⁷ Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017 in New Zealand provides for the river’s long-term protection and restoration by making it a person in the eyes of the law.³⁸ In January 2019, Bangladesh’s High Court has given orders to give some legal rights to all the rivers.³⁹ In February 2021, the Innu Council of Ekuanitshit and the Minganie Regional County Municipality recognized legal rights of personhood of the Canadian Magpie River through the adoption of two resolutions by the Innu and the municipality.⁴⁰ The river bears nine rights and can be legally represented by guardians responsible for ensuring that these rights are respected.⁴¹

³² “What are the Rights of Nature”, available at <https://www.invisiblehandfilm.com/what-are-rights-of-nature/>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ Universal Declaration of Rights of River, available at <https://www.rightsofrivers.org/>.

³⁸ Section 14 of the said Act declares that Te Awa Tupua is a legal person and has all the rights, powers, duties, and liabilities of a legal person. The rights, powers, and duties of Te Awa Tupua must be exercised or performed, and responsibility for its liabilities must be taken, by Te Pou Tupua on behalf of, and in the name of, Te Awa Tupua, in the manner provided. New Zealand became the first country to take such a step.

³⁹ Rina Chandran, “Fears of evictions as Bangladesh gives rivers legal rights”, July 4, 2019, available at <https://in.reuters.com/article/bangladesh-landrights-rivers/fears-of-evictions-as-bangladesh-gives-rivers-legal-rights-idINKCN1TZ1RG>.

⁴⁰ Available at <http://files.harmonywithnatureun.org/uploads/upload1069.pdf>.

⁴¹ *Ibid.*

3.3 Rights of Robots and Artificial Intelligence devices

Today, artificial intelligence is emerging and leading to debates about its regulation.⁴² Saudi Arabia controversially awarded citizenship to an AI robot, named Sophia, in 2017 - the first artificially intelligent machine to become a citizen.⁴³

4. CONCLUSIONS AND SUGGESTIONS

New commitments, needs and rights are emerging. A number of political, social, ideological, cultural, economic, technological and scientific changes have taken place that have strongly affecting the understanding of human rights, the mechanisms for their guarantee, and the strength and impact of the voices and movements that, from the global civil society, demand their respect. More freedom of expression and democracy in true sense must be implemented rather than democracy only under the Constitutions.

The personhood is no longer confined to the humans. The courts are adopting eco-centric rather than anthropocentric views on legal issues concerning the protection of animals and the environment. The current trend is of recognizing the environmental and electronic personhood along with the conventional rights of human beings. Thus, following simple suggestions are advanced -

- The expansion of human rights must continue as the Universal Declaration of Human Rights was adopted in 1948. It needs to be revised to suit the changed social circumstances of present times. The rights namely right to egalitarian democracy, right to pluralistic democracy, right to participatory democracy and so on must be expressly included in the U.D.H.R.
- The various rights pertaining to the humans such as rights relating to internet; sexual rights, etc. may be made part of the U.D.H.R.
- The Declarations dealing with living entities, other than humans such as water bodies or animals should be adopted separately by the General Assembly of the United Nations.
- A holistic, inclusive and interdisciplinary approach is required to enable societies to properly interrogate the potential impacts and outputs of Information and Communication technologies.

⁴² For details, see Nick Easen, "Rights for robots: why we need better AI regulation", Oct. 2019, available at <https://www.raconteur.net/risk-management/legal-innovation-2019/robot-rights-ethics>.

⁴³ Zara Stone, "Everything You Need to Know About Sophia, The World's First Robot Citizen", Nov. 2017, available at <https://www.forbes.com/sites/zarastone/2017/11/07/everything-you-need-to-know-about-sophia-the-worlds-first-robot-citizen/#c71518946fa1>.

- As a responsible member of the world, humans owe a responsibility to the other living beings, nature as well as human made Artificial Intelligence to take their care and use them sensibly.

It is hoped that official Declarations by the United Nations on the rights of non-human living entities would see the light and new human rights would simultaneously find place in revised Universal Declaration of Human Rights.