
Right to Life and Personal Liberty in Indian History

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The ideas of “Right to Life” and “Personal Liberty” date back to the beginning of human history. The right to life is inherently a part of nature since nature is the source of life.

The Ancient Indian Concepts of the “Right to Life” and “Personal Liberty”

The concepts of 'personal liberty' and 'right to life' were not unheard of in past generations. There is some evidence that these concepts may be traced back to the ancient Greek civilisation. “The ancient Greeks made a distinction between individual liberty and the liberty of the community. Pericles, the first Athenian statesman, delivered an oration at the funeral of the countrymen who died in the Peloponnesian war in 431 B.C. ⁱ He described the concept of liberty as the result of two notions: first, protection of groups from attack, and second, the ambition of the group to realise itself as fully as possible through the self-realization of individuals through human reason. The oration was delivered at the funeral of the countrymen who died in the Peloponnesian war.”

The Hindu Methodology Regarding the “Right to Life” and “Personal Liberty”

It is not accurate to state that there was no concept of liberty in India before to the coming of the British or that the concept of liberty in India is borrowed from the West. The ancient Vedas were responsible for the establishment of three important civil liberties: freedom (i) of the body; freedom (ii) of the living place; and freedom (iii) of life. In addition, the Mahabharata's Shanti Parva underlined the individual's right to civic liberty within the context of a democratic state. According to what Vishma declared in the Mahabharta, there was no law nor administration in the time before the creation of the state. ⁱⁱ The Matsya Naya presented a symbolic interpretation of the state of nature as the reign of the Fish, with the larger fish consuming the smaller fish to convey the message that strength triumphed over weakness. Vishma continued by explaining that the political state was the outcome of man's need for security and social order, in which he may live in peace, grow, and receive the advantages of the effort that he has put in. Later on, the Manu Smriti argued and provided enough evidence for the existence of a democratic form of administration, in which the ruler was democratically chosen and the people were free to live as they pleased. “Justice keeps awake while all are sleeping,” says Manu. “The wise guy is aware that Danda and Dharma are likely interchangeable terms. In India, the legal philosophy of life and personal liberty was founded on metaphysics, which assigned four dimensions in the form of Artha (desire), Kama (interest), Dharma (ethical value), and Moksha” (ultimate freedom, i.e. annihilation of all restrictions). ⁱⁱⁱ These characteristics were expressed in ancient India's legal codes via legal philosophy. ^{iv} These life goals had an impact on the social system, which led to the development of the caste system. ^v

The Idea Of The Right To Life And Personal Liberty In The Era Of Muslim Perspective

“The study of Indian history indicates that the magnificent Hindu period was subjected to intermittent Muslim invasions, the first of which was launched by Mohammed-bin-Quasim in 712 A.D.”^{vi} “The Muslim system of administration came to be created in numerous regions of India with the exercise of sovereign authority by the Muslim rulers.”^{vii} It is a given that there are no particular laws in Muslim law governing the structure and organisation of the state. However, the essential elements remain the same. The Muslim system of administration came to be created in numerous. It is important to note that the Muslim king did not meddle with Hindu law, and Hindus were still ruled by their own rules in personal issues. The Muslim legal system was modelled after the Caliphate of Baghdad and Egypt, with adaptations made to accommodate for India's age and environment. Every Muslim king was obligated to rule in accordance with the precepts of their holy law, the Quran, which outlined the general principles controlling Muslim social life. The individual designated as Qazi was in charge of implementing Muslim Personal Law. His responsibility was to decide matters within his jurisdiction based on the facts and circumstances, as well as the applicable law as enunciated by the official law officers known as Mufti. Thus, the courts existed, but the goals of justice were to create effective and efficient machinery for the defence of the rulers' interests. The entire governmental apparatus had nothing to do with the welfare of the populace and was designed to ensure the Empire's survival. Furthermore, non-Muslims did not have the same rights and advantages as Muslims under Muslim Law. Aurangzeb, on the other hand, cared for the subjects and provided compliance instructions. He established it a rule that no one may be imprisoned in jail unless a Qazi authorised it. He has also ordered that no arrest warrants be issued unless there is a prima facie case against the individual in question. Following his arrest, he should be brought before a law court as soon as feasible and his case determined. Indefinite incarceration without charge or trial was frowned upon and outlawed. He also established guidelines for the release of people on bail.”

In the first case, they should contact the local Qazi, “Be just, honest, and impartial; hold the trial in the presence of the parties, as well as at the courthouse and the seat of government.”^{viii} “Accept no gifts from the people who live in the location where you serve, and do not attend any and all entertainments.” “Let poverty be your glory.”

The Muslim rulers were unable to grasp the significance of their subjects' liberty, and the circumstances in jails were barbaric and inhumane, implying that the rulers lacked human values and that the issue of personal liberty was alien to their way of life. During this time, penalties were harsh and barbaric.^{ix} The authorities' main objective was to keep the populace in complete servitude, and the mere concept of individual liberty and human spirit liberation may be considered heresy punishable by death. Aside from autocratic governance, the strategy of conversion to Islam was publicly supported, and Ishwari Prasad stated that individuals who adopted Islam were spared from enslavement.^x There was little regard for human decency, and horror was the norm. “Another scholar, Jadunath Sarkar, stated that the government's main goal was just materialistic and squalid, and that the emperor did not care about the citizens' prosperity. Hidaytullah examined the entire era in his work, Democracy in India and Judicial Process (1966), and concluded that there was no evidence of rule of law in ancient India or the mediaeval period”.

Constitutional History:

It is conceivable to date the beginning of the right to life and personal liberty in the history of the world to the year 1215, if not earlier, owing to the fact that the first publication of the Magna Carta took place in that year. This makes it feasible to date the beginning of the right to life and personal liberty in the history of the globe. It is possible to explain that the history of the creation and development of the concept of personal liberty can be traced all the way back to Greek Civilization in order to dispel the misconception that concern for liberty was first displayed in the year 1215. This will help prevent the mistake.^{xi} This is done to ensure that there is no room for misinterpretation. The Magna Carta of 1215 is, of course, the immediate precursor, since it was in that year that King John handed the charter of rights in response to growing concerns about the possibility of civil conflict. The year 1215 was the setting for these events to take place. It was reproduced in 1216 with omissions and adjustments, and then it was released again in 1217 with further alterations. This magnificent charter is what is known as the Magna Carta of English Law, and it was republished in 1216. These two iterations of the Charter went through separate rounds of editing. In addition to a prologue, this Charter is comprised of a total of 64 individual sections. Clause 39 of the Magna Carta stipulates that “no man shall be taken or imprisoned, despoiled or outlawed or exiled or in any other way destroyed except by the lawful judgement of his peers or by the law of the land.”^{xii} Additionally, this clause stipulates that “no man shall be taken or imprisoned, despoiled or outlawed or exiled or in any other way destroyed.”^{xiii} According to the Fifth Amendment, the following is stated: In the United States Constitution, the Fifth Amendment provides that “no person shall be deprived of his life, liberty, or property, without due process of law.”^{xiv}

These events all took place during the same time period and had a significant impact on the development of the United States. The Indian people were moved to feel a feeling of pride in their ancestry as well as a sense of allegiance to their nation as a result of these occurrences. In order for their country to be granted the right to self-government and other fundamental rights, the people of India, under the leadership of Mahatma Gandhi, participated in a campaign of peaceful resistance.^{xv} People in India had their rights to life and personal liberty severely curtailed or completely denied by the British while they were in control of the country. This happened on a very regular basis. As a consequence of the heavy suppression of real requests made by the Indian people, an environment that helped contribute to the political unrest was developed. This climate helped contribute to the unrest. The people began to have a political awakening, and the assertion of basic human rights became an article of faith for the masses who were enduring a great deal of hardship. Despite claims that some rights did, in fact, exist for the people living in colonies throughout the time period in which the British controlled, the time period in which they were in power was a dark era for human rights. With the stroke of a pen, the Governor General has the ability to negate the whole range of ostensibly protected human rights, and as a consequence, the Constitutional machinery might come to a full and total standstill. In addition, the establishment of the Simon Commission on November 8, 1927 prompted the Indian National Congress in 1927 to bring forward, for the very first time, a demand for fundamental rights, which finally led to the construction of a Swaraj Constitution. This was the first step towards the establishment of a Republic of India. Annie Besant was of the opinion that the works of literature from the past, such as the Ramayana and the Mahabharata, were the foundations upon which the Indian Swaraj was built.^{xvi} As a direct result of this, the constitution was drafted in the form of the “Nehru Report,” and “it was submitted during

the month of August in the year 1928. In its findings, the Committee said that no one should be deprived of their life, nor should their dwelling or property be invaded, sequestered, or confiscated unless it is done so in accordance with the law. In addition, no one should be denied the right to have children. This was mentioned in connection with the demand that the Committee make for the fundamental rights. On the other hand, the British parliamentary committee in charge of the Government of India Bill of 1934 was not in favour of the constitution's provision for the preservation of fundamental rights". In spite of this, the committee did acknowledge that there are certain legal principles that may be appropriately incorporated in the new Constitution. As a direct result of this, the Government of India Act of 1935 contained provisions in Sections 278 and 297 to 300 that guaranteed British persons residing in India a variety of rights and forms of protection. These measures were aimed at protecting British citizens. The Sapru Committee presented its suggestions to the government of India in 1945 about the adoption of fundamental rights into the future Constitution of India. These suggestions have been made available to the public. Regarding rights, the recommendations made by the Sapru Committee were taken into account, and a differentiation was made between justiciable rights and non-justiciable rights. In 1946, a British Cabinet Mission visited India and came to the conclusion that the country's National Charter needed to include a legislated protection of Fundamental Rights. The Indian Independence Act was largely responsible for the dawning of this understanding. The Mission, which envisioned a Constituent Assembly to create the Constitution of India, urged the formation of an Advisory Committee to report, among other things, on Fundamental Rights. The Constituent Assembly would be responsible for writing the Constitution of India. One of the suggestions given by the Mission was for this to be done. ^{xvii}

ENDNOTES

- ⁱ P.B. Mukharji, Civil Liberties Ramananda Lectures (1965) of the Calcutta University (1968), p. 22.
- ⁱⁱ M.V. Patwardhan, Manu Smriti, The Ideal Democratic Republic of Manu (1968), p. 66.
- ⁱⁱⁱ S.D. Sharma, The Concept of Personal Liberty in Ancient Indian Legal Theory: Its Relevance in Modern Times, 4 K.U.L.J. (1978), pp. 97-98.
- ^{iv} P.B. Mukharji, Civil Liberties Ramananda Lectures (1965) of the Calcutta University (1968), p.23.
- ^v K P Jayaswal, Hindu Polity (A Constitutional History in India in Hindu Period). 1955, p.46.
- ^{vi} Sunil Deshta, Lok Adalats in India: Genesis and Functioning (1995), p. 29.
- ^{vii} P.B. Mukharji, Civil Liberties Ramananda Lectures (1965) of the Calcutta University (1968), p.24.
- ^{viii} M. Rama Jois, Legal and Constitutional History of India (1984), P. 4.
- ^{ix} A.S. Pandey, Society and Government in Medieval India (1965), p. 166.

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- ^x M. Hidayatullah, Democracy in India and Judicial Process, Lajpat Rai Memorial Lectures of 1965, (1966), p. 1.
- ^{xi} B.L. Hansaria, Right to Life and Personal Liberty under the Constitution—A Critical Analysis of Article 21 (1993), p. 3
- ^{xii} B.L. Hansaria, Right to Life and Personal Liberty under the Constitution—A Critical Analysis of Article 21 (1993), p. 3
- ^{xiii} Sunill Deshta and Kiran Deshta, “Philosophy of Right to Life,” Journal of Constitutional and Parliamentary Studies, January-June 1996, vol. xxx, Nos, 12, p. 22.
- ^{xiv} V.K. Bansal, Right to Life and Personal Liberty in India (1987), p. 89.
- ^{xv} KM. Sharma and L.P. Chaudhary, Expanding Dimensions of Freedom (1967), pp. 167-168.
- ^{xvi} Annie Besant, How India Wrought for Freedom—The Story of the National Congress Told from the Officials Records (1915), p. 609.
- ^{xvii} Select Documents-I, 48 (i) at 214-16.