RIGHTS AND DUTIES IN ANCIENT INDIA

No legal system can subsist without rights and duties and duties in the sense of act and forbearances towards others. The ancient Indian law, like any other legal systems of the ancient world, protected and law recognized the interests of individuals living in the community through law, Rights and duties construed as allowances, benefits and obligations were the part of ancient India legal system. But the concept of rights neither developed into the concept of natural right nor did it nature the psychology which is peculiar to the legal philosophy of the West. Modern concept of right brings with it to the owner of such rights, the sense, that he owns these rights like property. He thinks that others owe him the duty to respect his rights. He is of these rights though such ownership is called only incorporeal ownership. Such rights make men ego-centric. They only fee a concern about themselves with an unconcerned and indifference towards others and the affairs of society. This has resulted in the attitude of man to disown society and become irresponsible to its purposes. The enforcement of one's own legal rights through a legal action, which is just like a battle, is itself steeped in the idea of conflict, and quarrel of civilized combatants. To this extent the lopsided view of one's own rights generates disharmony as well as disintegration of social unity. Thus, the doctrine of natural rights seems to have too much sanctity to the idea of individual rights.

The doctrine of natural rights has its birth in terminological confusion created by natural law doctrine rob son considers that jus Natural produced the doctrine of natural right as a result of the ambiguity of meaning in gerent in the wood 'jus'.One meaning of Jus is right, That which is morally binding. Jus may also be a right, that is, an actual and legally enforceable right. In the latter signification, jus natural means a right of nature, a right possessing inherent validity by virtue of its own essential justice and moral force. It was from this that, the doctrine of natural rights which became the ally of freedom and a weapon of attach against tyranny was evolved.

The doctrine of natural rights has arisen only due to the loosening of control in Western society at the end of the medieval age. Feudalism, a social institution waned and ethics and religion lost hold upon the lives of people and state got so pre-occupied with military expeditions that the affairs of society were neglected while individual was taxed unnecessarily. The individual had to resort to the doctrine of rights for his safeguards against growing despotism of rights for his safeguards against guards against growing despotism of the state. At its initial stage the doctrine of rights performed the social function by giving expression to social purpose expressed by the legal system as a whole. Economics, politics and law all worked both for the individual and the society. There was harmony between the individual ego and the social purpose. Both functions for one another. But the degeneration set in, and process of disorganization started due to the changed circumstances. "When this process of degeneration has gone far, as in most European countries it had by the middle of the Eighteenth Centaury, the indispensable thing is to break the dead organization up and to clear the ground. In the course of doing so, the individual is emancipated and his rights are enlarged; but the idea of social purpose is discredited by the discredit justly obsolete order in which it is embodied".

Due to law economic relations, in the later half of the Seventeenth Centaury, the state itself began tobe considered as a machine. Reformation had already made Church a department of secular' Government. Machiavelli asserted the freedom of the state to disown morality and spurn the religious yoke. In the Eighteenth Centaury, state and Church ceased to work for the maintenance of social ethics and for furtherance of the common ends. Now people began to consider that their economic activity was beyond the jurisdiction of morality. when the medieval democracy was shaken from its roots and democracy of revolution was still in the womb, the Government grew indolent and aristocracy turned irresponsible, Chruch was now remotely concerned with the daily life of the masses, Christianity lost its great hold, God was reduced into 'frigid' categories of abstractions and individual began to assert his independence and forged the weapon of his rights.

It was said that state had no authority to infringe these rights. The existence of state is only justified in the maintenance of rights. The most important right was that of property. The Whole society began to be looked upon as a joint stock company where political power and distribution of goods like dividends were to be determined on the basis of the shares of property. It was though that no moral limitations could be imposed on the economic self-interest of individuals. Rights then appeared as foundations of social order. The pursuit of private end began to be look as public good. French revolutionaries have rights as absolutes of social and political order. Natural law ideology of rights was converted into utilitarian basis by Bentham and his followers. Adam Smith asserted that by economic mechanism these rights could be converted into public good. The individualists, like Turgo, Jefferson, etc. used the doctrine of individual rights to mitigate the abuses of the times- i.e., to do away with the last vestiges of feudalism which was an obstruction to free economic activity in society. Today again due to the failure of laissez-faire doctrine and due to class conflicts degeneration of society and commercialization of human relations, this doctrine of rights has reveled its destructive visage owing to which curbs have been put on it. "In England these categories are being bent and twisted till they are no longer recognizable, and well, in time be made harmless. In America where necessity compelled the crystallization of principle in a constitution, they the rigidity of an iron-jacket. The magnificent formulae in which a society of farmers, merchants and master craftsmen enshrined its philosophy of freedom are in danger of becoming fetters used by an Anglo-Saxon business aristocracy to bind insurgent movements of the part of an immigrant and semi-servile proletariat.

There has been a general reaction against the doctrine of natural rights which has become a synonym for exaggerated individualism which is unconcerned with social purposed, and is indifferent to degradation and deprivation of a great mass of humanity. It was castigated as freedom or right to exploit. It was a great obstacle for the legal science because it had extra-legal validity. Austin was of the view that rights are acts or forbearance in the context of positive Law. To him the relation of right and duties only prevailed in case of relations between citizens inter se. Rights are legal creations sovereign is the creator of rights. Rights against sovereign are contradictions in themselves. Sovereign is the creator of rights. Rights against sovereign are contradictions are themselves. Sovereign's power cannot be limited as otherwise it becomes a negation of sovereignty itself. One has no right against the sovereign. Even if it is said that converging has got rights, it is also a negation of sovereignty

because rights can only be created by superior authority. No superior authority can be conceived of so as to grant right to the sovereign as this will, in effect, be again the violation of the very logic of sovereignty. No one has superior power to grant rights to the sovereign. Sovereign has then neither rights nor duties. The subjects or citizens have only absolute duties towards the sovereign as he holds the power to command obedience. It is quite clear that against sovereign, which only a personification of state is; the individual can have no rights. The absolute rights are not logically admissible in the science of law as they cannot be explained in the legal relations, apart from the context of law. These rights are only relating to a particular system.

If rights are objective, i.e., if they mean allowances, benefits etc., allowed by law, one can scarcely object to the doctrine of rights. The advocated of the doctrine of rights want to subordinate the objective law to grant subjective rights as predetermined a priori conditions of civic life. It is pre-supposed ,as Kelsen observes: “First there arise subjective rights and chief among these property, the prototype of all subjective rights, sand only at a later does there emerge the objective law as a political order, protecting and serving the independently arisen subjective right Accordingly, the whole idea of rights is grounded in the assertion of the subjective right of property. “The ideological function of this whole contradictory conception of subjective right is clear enough. It is intended to uphold the idea that subjective rich that is, private property, is, in respect to objective law, a transcendent, a priori category in impassable obstacle to the construction of the content of the legal order. This conception of a subjective right different from and independent of the objective law becomes the more important when the latter is recognized to be a constantly changing order, created by and founded neither on nature nor upon the eternal and divine will, particularly when the construction of the objective law proceeds in a democratic fashion. The conception of an independent subjective right, which is even more just than the objective law, is a device to protect the institution of private property from damage at the ideology of subjective right is related to the ethical values if individual freedom and autonomous personality when in this freedom property is always included Kelsen point out that the concept of right gets undue emphasis in the legal systems of today whereas the concepts of duty gets only step motherly treatment. A legal system is, no doubt, capable and competent to confer rights on individuals but if it does not so confer them, but only imposes duties, to express legal relations, the system can successfully discharge its legitimate functions. His intention is to put the notion of duty in the forefront. Right is only a device of capitalistic legal order founded upon the concept of property individual interests. In this way, the pure theory of law’ rejects the dualism of subjective and objective law and thereby has also removed the possibility of any ideological misuse. Legal relationship, called “Rights can equally be expressed in terms of duties.

The doctrine of individual right is like wise rejected by Duguit. To him the conception of subjective right is either superfluous or dangerous and he only recognizes duty. According to him here is no such thing as subjective right either in the state or in the individual; the terms social right’ and individual right’ are meaningless. As for natural right’ it was like the general will, a invented by the Eighteen Century merely as a set-off against the pretensions of absolutist of absolutist sovereigns. Duguit, in order to strengthen his view, quotes a passage from Comte, and recommends that it be placed in the Chamber of Deputies.

"The word rights deserve to be banished from political terminology as much as the world cause from philosophical terminology. Of these two theological metaphysical concepts, that of right must hence forth be considered immoral and anarchical, that of cause irrational and sophistic Right has no true meaning unless it emanates from a super human will. In its struggle against the cortical authorities, the metaphysic of the five Centuries invented so called human rights which at best could possess only a negative function. At the first attempt to give them a truly organic significance, they immediately betray their anti social character by striven everlastingly to consecrate individuality. In the state of the actual world which recognizes no celestial prerogative, the idea of right disappears for ever. Every man has duties towards every other man but no man has any rights properly so called In other words, the only right which any man can posses is the right, always to do his duty.

According to the Scandinavian realists the net physique of rights is not a blessing for the science of law. Further, the doctrine of rights does not serve the purpose of languet. According to Ross, the notion that between purchase and access to recovery, something like legal right of ownership is created is nonsense. The word 'right" has got no semantic reference. It has originated from facts which are not remembered now. The sentences in which it occurs can be rewritten without mentioning it. It only describes the legal relations of factual circumstances which entail legal consequences. The real function of rights is to describe law in force or its application in particular circumstances of the case. The concept of rights does not "designate any phenomenon of any kind that has inserted itself between the conditioning facts and the conditions consequences, but is solely a means by which it is possible more or less accurately-to visualize the content of a set of legal rules, namely those that concept a certain disjunctive plurality of conditioning facts with a certain cumulative plurality of legal consequences." It appears to this humble author that the concept of right has found entry into different legal systems, only to safeguard the interests of the individual against those who are prone to disown responsibility. In order that life of the society (Social, political, religious, etc) may remain orderly and peaceful and without conflicts the concept of right was evolved as a device to achieve these goals. Thus is Western when social responsibility was disowned and the individual merely looked to their own interests the doctrine of natural or individual right was formulated. It would thus see that the doctrine of rights thrives upon distrust and dies in arrogances. It pre-supposes conflicts ridden culture.

It is peculiar effect of Western Culture which has started from Greece where man for the first time, was viewed a political animal. Thus begins a course of journey in conflicts, and antagonism begins, which has not ended as yet. It has its aim in harmony and co-existence but not integration and synthesis.

The great virtue of Indian culture was that it was integrated. Therefore, no protection by way of a doctrine of rights was needed. The State, the individual, and the classes were integrated by the great concept of Dharma conceived as duty which alone was the Right and the individual never thought of having the rights. Law was not the instrument of government or an agent of state nor was it an indifferent spectator to the activities of the individual. Dharma, as a law, was a total concern of Man-a complete philosophy off life and action. Man was only to do duty by which could participate in dharma

right, or Dharma, like Brahman (absolute reality), is metaphysical reality, is immanent and transcendent. Every individual is the embodiment of Brahman when he identifies with it. But when he suffers from limited consciousness and thinks of himself as a limited self, he is divested of Brahmanic consciousness and considers himself separate and apart from the ultimate reality which in fact he is not. In this state of Non-Brahmanic consciousness he lives miserable life. Similarly, Dharma alone is right But when a man thinks of right', he makes himself limited by his selfishness. Brahma as right is objective but when this dharma or right is broken into rights and appropriated by people and institutions for their own interests, the since of right as good or integrating force vanishes. It results into disintegration and disorganization. The only way at own right is to perform one's functions well. Right can only be expressed in being one's duty. Duty is the only passport or title of right. The Gita rightly asks the person to do his /her duty according to dharma which is the law and according to one's station in life (Swadharma). There are no rights but only what one ordinarily means by rights is what others should perform duties for him. Therefore, when one speaks or rights, he is in fact pointing towards the duties at the other side. If duty is the object of the so-called right we need not use the concept of right at all. Brahman as has been pointed above is the metaphysical reality which is unknowable in its unmanifested form. But when it is manifested through lila or 'kama' it becomes Sakriya Brahman. It is expressed in religion as Sugan Brahman or God. Its social aspect which is also the legal aspect is dharma. Which, in metaphysical aspect, is the character, function and nature of the world, the mystic force, the quality or property of all things. In order to reach Brahman one much has true knowledge. In order to reach Dharma one must have true deed or faithful performance of one's own duty. Detachment another name of tolerance and co-operation is a sine quo none both for knowledge of Reality (Brahman) and enforcement of right or Dharma. For the former, one has to de-personalize in knowledge, and for the latter, in action. Indian ethics, Metaphysics and jurisprudence are then variations of the same theme through different media. In the West the juristic, Summon Bonun is reached approximately through the doctrines of natural rights, common law, public policy, equity, justice, etc. but due to their limited approaches the reach to juristic heaven is inaccessible to them. The concept of dharma includes all the western legal ideology shorn off their antagonisms.

The doctrine of rights did not get the fruitful soil in India. In Indian Language there is no appropriate word do anything only right. The Word "Adhikar's has not the meaning of rights in Sanskrit. It is only due to the western influence that it has taken over the meaning or right which was necessary for the movement of freedom against British regimes. Adhikari in Sanskrit is one who is fit or able or qualified for a particular task. He is not understood in the sense of a person owning power or rights. The ancient Indian is not allowed to speak as owner of the rights but he is a participant in the right. He is not in any danger of alienation of himself society. He is not an anarchist, who distrusts state and government. To him the state is not a confiscator of right but a follower of right. To him religion is not an institutionalized violence against other religions. Society to him is not something like a prison where there are checks or restraints on him. He never considers his civilization as a curse. The Ancient Indian lives and thinks in freshness of sprit, works for synthesis and integration through his thought and action.

Modern Indian case law and consequent amendment of the constitution again prove the inappropriateness of the doctrine of rights several times which is nothing else but the revival of the concept of dharma which puts duty on the forefront. No. Amount of amendment, no modification, no further borrowing form alien soils will remedy the gaps that are until and unless were revert (making such allowances for new changes due to science and technology) to his basic India concept of law which is already therein in ancient concept of "Dharma'.

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