"HUMAN RIGHTS, WORLD RELIGIONS AND HUMAN DIGNITY." COMMENTS, ANALYSIS AND CRITIQUE OF THE "UNIVERSAL DECLARATION OF HUMAN RIGHTS BY THE WORLD'S RELIGIONS"

By Anjali Choksi[*]

Introduction

My perspective on this matter is that of a lawyer practicing in the field of Native rights both before the courts and in negotiations with government on behalf of Aboriginal peoples. I shall focus, therefore, on how the draft *Universal Declaration of Human Rights by the World's Religions* may affect, both positively and negatively, the legal claims, the culture and traditions and the aspirations of Aboriginal peoples.

I propose to limit my comments to three of the Articles and one of the Whereas clauses: Articles 8, 15, 17 and the seventh Whereas clause.

Restitution and Compensation

The seventh "whereas" clause of the draft Declaration provides that "not to compensate victims of imperialism, racism, casteism and sexism is itself imperialist, racist, casteist and sexist". Article 8(1) of the draft Declaration provides that "Everybody has the right to demand restitution for historical, social, economic, cultural and other wrongs in the present and compensation for such wrongs committed in the past, provided that the victims shall always have the right to forgive the victimizers."

The continuing effects of imperialism, racism and sexism against Aboriginal peoples are evident throughout Canada, and I provide only some examples herein.

As the Supreme Court of Canada has noted, promises to Aboriginal peoples in Canada were often honoured in the breach. Across the country, reserve lands and lands held pursuant to Aboriginal title have been taken from Aboriginal peoples. Treaty promises have been breached with no recourse until quite recently through the operation of section 35 of the *Constitution Act, 1982*[1]. The *Indian Act* has historically prescribed a dominant role to the Minister of Indian Affairs in managing these lands and, especially during the first half of this century, that role has often been exercised negligently and without concern for the rights of the First Nations.

In an effort to assimilate Indian children and remove them from their home environment, which Canadian officials considered to be a barrier to assimilating them, residential schools were opened across the country. These schools operated

---

[*] Partner, Hutchins, Soroka & Dionne, Montreal.

[1] *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (U.K.), 1982, c. 11.

from the late 1800's until well into the late twentieth century–the last residential school closed its doors in the early 1980's. Indian parents were threatened with punishment for not allowing their children to be taken to these schools. At the schools the children were punished for speaking their Native languages or creating traditional art. Physical abuse was rampant and many of these children were also sexually abused. It is clear that many officials in the government and the churches who ran the schools knew of the abuse and did nothing about it. No attempt was made to ensure that the adults who worked in the school were qualified to work with children.

Moreover, while the paternalism of those advocating the residential school system was likely representative of the thinking of the early twentieth century, that does not alter the fact that the effect of the residential schools system was to rob many Aboriginal people of their culture and their connection to their people, thus weakening the affected Aboriginal communities and peoples and their ability to sustain themselves as peoples. Today, it is generally recognized that this constitutes a wrong against these communities as a whole; and, in fact, as of 1948 the *Convention on the Prevention and Punishment of the Crime of Genocide* explicitly recognised that removing children from their homes and forcing them into another culture was a form of genocide.

Another manifestation of racism or imperialism is the forced relocation of peoples. In the 1950's Canadian officials relocated Inuit communities in Quebec to Grise Fiord and Resolute Bay areas in the Arctic which were over 1,200 miles north of their homelands and which had radically different climate and wildlife conditions. This was done without the consent of the Inuit who were not informed of the drastic changes which would have to occur in their way of life. Moreover, while Canada promised the relocatees that if they did not like their new homes, Canada would help them to move back within two years, Canada ignored repeated requests to do so.

In most of the cases of the wrongs summarized above, the government has steadfastedly refused to apologize. In the case of the residential schools the government has offered a half-hearted regret that abuses took place at the schools.

There is much debate in Canada about compensation and restitution to redress these wrongs. In many cases the government refuses to admit that anything wrong was done, stating that the wrongful behaviour was appropriate for the time it was committed, even if it is not today. In negotiations government officials often urge Aboriginal peoples and their representatives that the negotiation process should focus on the future and that we should not dwell upon the past. Yet, the past cannot be forgotten, or forgiven, so easily.

Another issue is the form of compensation – for instance, money damages are a poor substitute for lost lands. The loss of part or all of a community's land base also involves a profound political, social and economic cost which goes beyond the actual value of the land itself.

Yet another issue is that of the government's use of limitations periods which bar claims for damages when the cause of the damages took place too long ago. This is exacerbated by the fact that, in Canada, for a substantial part of this

century, section 141 of the *Indian Act* made it illegal to raise money to pay for the prosecution of claims on behalf of Indian people.

I wonder how the seventh whereas clause, cited above, would relate to this issue? If it is a present wrong to refuse to compensate, then the breach would presumably not be limited. This appears to be what that clause is stating but it could be made clearer that failure to make restitution is a present breach, and that the "whereas" clauses are an integral part of the Declaration. Perhaps the drafters could even have the seventh "whereas" clause incorporated into Article 8?

Right to a Nationality

Article 15 of the draft Declaration states that: "(1) Everyone has the right to a nationality; (2) No one shall be arbitrarily deprived of one's nationality nor denied the right to change one's nationality;"

At international law this concept is generally recognized as a right to nationality in the country one resides in. However, for many Aboriginal peoples, such as the Mohawks, their nationality is that of their First Nation. Most Mohawks do not define themselves as Canadian or American citizens, but as Mohawk citizens. Like many other Aboriginal peoples, the international border was imposed through their Aboriginal territory without their consent. For the Mohawks, and others, the imposition of the border does not affect their national status or their rights as a people.

This issue is of heightened importance for Aboriginal peoples in Quebec, as the province of Quebec itself has significant aspirations for sovereignty. Quebec has long maintained that upon its accession to sovereignty, the Aboriginal peoples of Quebec and their territories would automatically become part of a sovereign Quebec. Once again, Aboriginal peoples would have the sovereignty of another nation imposed upon them. Aboriginal peoples could invoke Article 15(2) of the draft Declaration and argue that they were being arbitrarily deprived of their nationality; however, it seems to me that the Article, as drafted, protects the right to a nationality rather than the right to one's nationality.

Thus, Article 15, by protecting the right to "a" nationality and not "their" nationality, would not protect the right of Aboriginal peoples to their own nationality as opposed to one imposed upon them. If the drafters of this document agree that it is important to protect the nationality of Aboriginal peoples, then this section needs to be clarified.

Right to Property

Article 17 protects the right to property. It states that

> (1) Everybody has the right to own property, alone as well as in association with others. An association also has a similar right to own property; (2)

> Everyone has a right not to be deprived of property arbitrarily. It is the duty of everyone not to deprive others of their property arbitrarily. Property shall be understood to mean material as well as intellectual, aesthetic and spiritual property; (3) Everyone has the duty not to deprive anyone of their property or appropriate it in an unauthorized manner.

I have mixed feelings about the wisdom of including such a protection.

On the one hand, it appears that this Article could be used to protect Aboriginal peoples' property rights, both intellectual and land-based, and to give them a remedy at international law for the unauthorized appropriation of their culture.

However, North America is a capitalist society which, in general, espouses anglo-European concepts of property ownership. I am concerned that this Article could be used by non-Aboriginal people in order to negate Aboriginal property rights in favour of their own property rights.

It must be remembered that the scope and content of the concept of Aboriginal title – that it is the right to the land itself – has only recently been defined by the Supreme Court of Canada. Furthermore, the Canadian courts have taken the position that until the entrenchment of Aboriginal and treaty rights in the Canadian Constitution in 1982, those rights could be unilaterally extinguished by the federal government (although it must be admitted that the test for proving extinguishment is an onerous one).

Over the past hundred odd years a number of non-Aboriginal have purchased from the government lands which are the subject of Aboriginal title claims. How does Article 17 affect such matters? Since Aboriginal title and rights are often described as *sui generis* (unique, of its own nature), and until 1982 subject to unilateral extinguishment, would it be assumed that they would give way to more traditional property rights?

These are issues which should be addressed if the rights of Aboriginal peoples are to be protected in this Declaration.

HUMAN RIGHTS – FROM JAIN PERSPECTIVE

By Shantichandra B. Shah[*]

All sounds recoil thence, where speculation has no room,
nor does the mind penetrate there. The liberated is not long
or small or round or triangular...he (she) is not black...or white...
he (she) is without body, without association with matter, he (she)
is not feminine or masculine or neuter; he (she) perceives, he (she) knows,
the nature of the liberated soul is beyond description
and beyond analogy, its essence is without form;
there is no condition of the unconditioned.

Lord Mahavir – *Acharanga Sutra*[1]

Denial of human rights are based on distinctions of colour, race, religion, sex, age, class, caste and so on. It is the karmik conditioning of the soul which is the cause of such distinctions and the denial of rights based on such distinctions. The denial of human rights is thus based in the impurities of the soul and human rights does thus become a spiritual problem. The disease is that of the soul and the cure must therefore lie in the soul also.

Conditioning is the result of karmik burden and the goal is to rise to the *condition of the unconditioned.*

Since the problem is rooted in karmik conditioning, a few words to deal with the karmik conditioning from the Jain perspective.

1. The soul in its pristine state is free of conditioning.
2. The karmik impurities impart conditioning and attitudes to the soul.
3. The teachings of the Tirthankars show the path to purify the soul and set it free of all conditioning and spiritually evolve it to revert to its pristine state.
4. There are no doctrines or dogmas or fundamental positions. The only way to know is by first hand experience.
5. There is a beginner's Code of Conduct. It is necessary at the lower state of spiritual evolution. This Code amongst other things does require a conduct which rejects violence, exploitation and unjust enrichment, and prescribes non-possessiveness, truth and self-restraint.

---

[*] President, International Mahavir Jail Mission.

[1] English translation from P. Jaini, *The Jaina Path of Purification* at 271 (slightly modified).

6. The evolutionary ladder has 14 rungs. The first Awakening is at the fourth rung – for the first time the soul glimpses at its true nature.[2] This experience gives rise to the onset of faith and the beginning of samyak darsana or enlightened perception. This is just the beginning and one can move up and also move down from here.

7. Enlightened perception of knowledge is the perception or knowledge which is attained through the agency of the soul. In its absolute state, the enlightened perception and enlightened knowledge are also infinite. These are within the nature of the soul. The perception and knowledge in every day life are finite and owe themselves to mind and the intellect and books and studies and external agencies. Enlightened perception and in its absolute form is within the soul and beyond the mind and the intellect and the external agencies. It is infinite.

8. Enlightened perception brings with it enlightened knowledge and enlightened conduct follows, in that order. Conduct by itself without the perception and the knowledge does not amount to much. Which means that a Conduct which is imposed from outside does not count. It has to evolve from within – like the quality of mercy it is not strained.

9. The final stage and the summit of the evolution is the state of liberation and the condition of the unconditioned – a state of infinite bliss, infinite powers and infinite perception and infinite or absolute knowledge. The soul no longer identifies itself with the body or with the mind.

It is ironic that religion is used to justify denial of human rights through-out human history. The Jain system prescribes some built-in safe-guards against fundamentalism as well as against claims to monopoly on truth.

1. Acknowledgement that Truth and Reality are Infinite and Absolute.

2. Acknowledgement that the tools at our disposal are finite and are not adequate to deal with the infinite and the absolute.

3. The distinction between direct and indirect knowledge is recognised. What is perceived with the senses is indirect and therefore secondary and less reliable or imperfect knowledge. Direct knowledge is from within and inherent to the pristine Soul. This in the purest form is perfect knowledge, Absolute Knowledge or Infinite Knowledge.

4. What one hears and reads, even the Scriptures, is indirect knowledge and therefore secondary.

5. Until one has Absolute knowledge, one does not Know. And, one does not have Absolute Knowledge until one is liberated.

6. Therefore, the concept of Non-Absolutism or of Multiplicity of View-points. This is *Anekantvad*. This is an acknowledgement or admission of one's limitations.

---

[2] *Ibid.* at 142.

7. Pursuit of Knowledge must however continue. This then brings the system of *Nayavad* and *Syadvad*. The *Nayavad* entails dealing with segments and not the whole – the segments put together may approach the whole but can never be the whole. *Syadvad* entails prefacing of all statements with "It appears that". This ensures intellectual integrity.

8. There is also the system of logic of Seven Postulates – the *Saptabhangi* and the *Saptabhangi-naya*. The Seven Postulates are: is, is not, Is and is not, cannot be determined, is and cannot be determined, is not and cannot be determined, is and is not and cannot be determined.

In science and mathematics, uncertainties and imponderables are duly acknowledged. The same spirit must prevail in theology and humility, as well as intellectual integrity must prevail to ensure that claims as to monopoly on truth are not made and other view-points be not only tolerated but respected and protected.

Where does one find comfort in religion in the context of human rights? The need is to save religion from losing spirituality. The need is to save religion from being exploited by fundamentalism. It has been said that religion is the song of the soul.[3] Let the freedom to sing prevail.

In practice we may find that it does not quite conform with all the principles as outlined above. On the other hand, there is always a question of differences arising through impact of cultural and social environment. The following may merit some consideration in this context.

(a) while one sect of Jains ordains nuns (in fact there have been more nuns than monks at any given time since the past 2500 years), another sect does not allow women to be ordained as nuns; and

(b) nuns do not make the highest ranks of Acharya or Upadhyaya, subject to one or two exceptions; and

(c) there is only one Tirthankar who was born a female as against twenty-three who were born male; and

(d) one sect of Jains believes that women cannot get liberation.

Some comments on the draft for the *Universal Declaration of Human Rights* by the World's Religions:

1. Regarding the paragraph immediately preceding Article 1, one wonders if instead of "all people" it should be "all living beings".

2. Article 12 (4). This may curtail free speech and free discussion.

3. Article 13 (2). What about civil disobedience? Morality against Law?

---

[3] A. Sushil Kumar, *Song of the Soul* at 16.

4. Article 16. Lord Mahavir, the last of the twenty-four Tirthankars, did not wish to distress his parents and postponed entering into monastic life until both his parents had passed away.
5. Article 17. Is there a concomitant duty not to amass property and power, keeping in mind the insatiability of human-beings.
6. Article 24. Should not the entire creation, as against just the earth, have the right to rest.
7. Article 25 (2). Not just the parents but also the society.
8. Article 29 (2). Can the onus be a lot higher in the matter of choice between non-violence and violence in the context of asserting one's rights. Let us for instance compare non-violent civil disobedience against violent revolution.