

BILL of RIGHTS

When it comes to “human rights”, the real truth of their existence is that no “rights” exist except those which can be sustained. And, if they can’t be sustained through a Constitution and rule of law, the only other option for an individual is to protect his or her perceived “rights”, by force.

Much has been said about peoples' Rights, but when it is all said and done, there are really only 3 basic Rights. These are:-

- (1) The Right to Life
- (2) The Right to a concept of Liberty
- (3) The Right to the pursuit of Happiness

The primary Right of a person to live their life is an obvious and fundamental “Right”, without which all other “rights” are meaningless.

The next obvious question is; how does a society ensure this “Right” is sustained? Can a society do that? The next question is; to whom does this “Right” apply – does it apply to every living human being? Or does it apply only to the human beings within a given society? Does it mean that capital punishment is forbidden? Does it mean that taking someone’s life when defending ourselves, or defending our nation, is also forbidden? These are just a few of the questions that deal with the issue of sustaining life.

The next obvious “Right” also raises many similar questions. The maintenance of the people’s “liberty” is a very subjective issue because; the existence of any Government must automatically limit the existence of the concept of “freedom” and “liberty”. Technically, it should be the people’s prerogative to define what “powers” they are prepared to delegate to their elected representatives to restrict the individual’s “freedom” and “liberty” in doing what the individual considers is in his or her’s own best interests.

In a society “freedom” comes in two basic forms, one is defined by the extent we are free from interference, and the other is the defined by the extent we are conscious of our responsibility to others in respecting their “freedom”. Of course, the interpretation of both the concepts can be as wide as the number of individuals in a society.

The third fundamental “Right” really should determine the purpose of any society of people; the achievement of happiness. No society should be created to inflict misery and torment on their people, but how is it possible to decree that people should be “happy”?

Thus, from the very beginning, it should be obvious to any rational person that the Declaration of a Bill of Rights is a rhetorical exercise that no society can honestly sustain in the reality of our current development.

Even if a Bill of Rights is embedded in a Constitution the implementation of its principles can only be enforced through legislation. And as we all know, legislation can be changed at any time at the whim of the political party in power.

Ironically, each of the Australian States had been under the British Bill of Rights charter of 1688 -1689 until the deplorable Westminster Act of 1942 purportedly allowed the States to make laws repugnant to British laws. Effectively, that nullified the British Bill of Rights, and that was further, supposedly, enforced by the Australia Act of 1986. Both of these Acts significantly tried to alter both the Federal Constitution and each of the State's Constitutions, but neither Acts were ever presented to a referendum of the Australian people. In a strict legal sense, both Acts are, or should be, ultra vires, if the legal fraternity had the integrity to honestly abide by the system they take an oath to uphold.

Like everything in Life, it must be in balance. Rights, therefore, come with certain responsibilities and the main one is that no individual can demand a Right of any type that is at the expense of the Rights of another person. Theoretically, we seek to appoint a Government for the principle purpose of protecting the Rights of each and every individual in our society. The functions of the Government ought to be subordinated to this responsibility, but they seldom are. In fact, protecting the "rights" of individuals in a society invariably rate quite low on the agenda compared to protecting the role of Government and the bureaucracy.

Any proposal suggesting "rights" can be declared by legislation that is open to amendment at the whim of any political party in power at any given time, is a monstrous deceit deliberately aimed at hoodwinking the people.

A lot of people like to claim there are a number of other "rights" that should apply, but these really can only be defined as "subordinate Rights" because; they stem from the three primary "rights". If there are so many unanswered questions about sustaining the three primary rights how many more questions would be raised about sustaining these subordinate "rights"?

These other "subordinate Rights" are meaningless without the recognition and acceptance of the three principle Rights stated above. When living in a Society there is a lot of wishful thinking that various "subordinate rights" should be recognised

because there are many essential factors that impact on the normal daily functions of the people.

Some of the "subordinate Rights" that are often claimed are

- (1) The Right to privacy (unless you are an "extremist")
- (2) The Right of Free Speech (an essential "right for a democratic society, but absolutely conditioned by legislation against slander, etc.)
- (3) The Right of Free Trade (whatever that means?)
- (4) The Right to produce (but not the "right" to a job)
- (5) The Right to own property (under some form of legal system)
- (6) The Right to associate, or not to associate (except for "bikies and other "undesirables")
- (7) The Right of self-defence (but only under certain conditions)
- (8) The Right to worship freely (unless the "religion" is banned)

Thus it becomes obvious that trying to make any sort of Declaration of Rights has to become a legal nightmare in trying to define how these "rights" can be applied, and under what conditions and to whom they can apply.

It is virtually impossible to make any such Declaration without infringing on the assumed "rights" of someone else.

Like every such Declaration so far written, they are all mainly recognised in the avoidance rather than in their application, unless they can be used selectively to discriminate against some person or action.

IN SUMMARY

I believe it should only be necessary to rely on the rule of law to protect the welfare of everybody in our society, but unfortunately, our current legal system is far too dependent on money to apply in a fair and equitable manner to everyone. There are one set of laws for the rich and another for the poor, dependent on the quality of the representation a person can afford.

The same system will automatically apply to any Declaration of Rights that must ultimately involve a dispute.

Hence, before we start talking about a Declaration of Rights, maybe we would be far better off addressing the issue of true legal reform.

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