

THEME COMMITTEE 4, BLOCK ONE

THE NATURE AND APPLICATION OF A BILL OF RIGHTS

Biblical Scholars in the eleventh through thirteenth centuries AD used the concept rights in the Bible (translated with "justice" and "authority") to form the basis of the eighteenth century Enlightenment that rejected the Bible and Christianity.

For these scholars, rights were both "unalienable" and "universal". "Unalienable" in the sense of being God-given and incapable of transfer or surrender by man and "Universal" in that they belong to all persons from conception to natural death, irrespective of situation or origin.

Clearly then, the nature of a Bill of Rights should be a document enforcing the heritage of divine authority with the corresponding duties that inevitably come from being granted responsibilities in discharging the authority. What it had become, though, is a lofty set of ideals that man has set for himself to escape from the natural consequences of a sinful nature.

It is, therefore, hardly any surprise that notorious human rights violators had lengthily and impressive sounding lists of rights and, yet, disregarded these with contempt as in the old USSR and its satellites.

To try and safeguard against these abuses, we attempt to correct evil with evil. Humanity came to the conclusion that, because of the corrupting effect of power, even properly constituted, elected representative of society, to be found in legislatures across the world, are incapable of safeguarding the rights of individuals, as they are subject to the whims of an electorate and therefore, has to act acceptably to stay in power- On the face of it, the brilliant way of circumventing this shortcoming, was to place all that power in the hands of a select ministry of normally judicial background, who are elected to bodies such as constitutional courts.

The theory behind this widely followed practice seems to be that because these individuals are not accountable to an electorate and, therefore, secure in their positions, that they will discharge their position of authority with a sense of wisdom, fairness and justice. This surely must be a fallacy. A jurisprudential background does not ensure fairness, as the experience of having legally trained senior officers in despotic governments, clearly must have shown.

When God instituted His government on earth, He provided the same checks and balances are now a part of the federal systems of government in accepted democracies across the globe- It was not, however, part of His method to place any more authority in the hands of the judiciary than in the hands of the other two power bearers.

Two ways of ensuring a fair distribution of power come to mind,

Firstly, to provide a balance of power, even for the constitutional court and

Secondly, to ensure that the court does not make law by interpreting the constitution and Bill of Rights from a particular perspective.

As Christians, we feel that the following aspects should be clearly spelled out, It must not be left open for the constitutional court, or any other competent body, to adversely affect morality in this country. In this regard, to elevate atheism and occultism to the level of recognition that organised and accepted religion occupies is unacceptable. Equally so, the right to life should make provision for the death penalty, while ruling out abortion and euthanasia. The sanctity of the family must be protected and same-sex relationships should not be recognised. At most, private relationships between consenting adults could be tolerated.

In the same vein, pornography and it's partner, prostitution, must be specifically excluded from any protection afforded in the Bill, to ensure that the core family is allowed it's continued and unthreatened existence.

That the Bill of rights currently makes no provision for the protection of the sanctity of marriage between a man and a woman and the attending issues of a family. In the light that, most human rights documents afford the family as the core unit of society certain rights, the lack thereof, in the local version, needs to be urgently addressed.

In the American experience and in several other jurisdictions, the effects of providing those who temporarily or permanently, throw off the protection of society by committing heinous crimes in a warped sense of justice or fairness with the same, if not greater rights, than their victims have become shockingly apparent. in the case of murder, the criminal totally negates the most basic of rights and, yet, is afforded the same rights, coupled with the ineffectiveness of a fettered system of policing.

Every act that a person commits has certain consequences and, while it would be insensible to declare every murderer outlawed, a balance needs to be struck between the rights of the innocent, law-abiding victims and that of the criminally-intent perpetrator who shows contempt for the laws that must, of necessity, regulate society.

The Bill should further include redress and support systems for the victims- It would be a good idea to make the enforceability of the rights a direct consequence of fulfilling one's duties or responsibilities as a law-abiding citizen.

Should one view human rights as distinct from any biblical perspective, then it would be arguable that, just as breach of contract leads to certain penalties, breach of the contract between humans to use certain fundamental human rights as the boundaries within which to act, should lead to certain forfeitures.

It is only when we realise that humanity in it's fallen nature is not capable of handling God's authority properly, that we will begin to see the Bill of rights, not as an absolute, and infallible ideology to ensure peace and prosperity for all. Rather, it is to be viewed as the written boundaries within which all persons are to do all those things which we, as humans collectively called society, hold in esteem. In order to make this possible, we should not place undue accent on the innate dignity and worthiness of the human individual.

We should constantly remind ourselves that the ideology of human rights and human rights instruments today, has at it's core, the limitation of State authority" and the achievement of maximum freedom and liberties for the individual.

In this well-meaning, though thoroughly misguided process, due regard is not given to balancing these libertarian ideas with the prevention of adverse consequences that could easily flow from the process.

To counteract this effect, proper measures must be introduced to clearly stipulate the demarcated areas within which individuals who will want to use their rights to the detriment of themselves and society, will be barred from doing so. Neglecting to take up this task, will inevitably, lead to lawlessness and chaos, for which we will have ourselves to blame.

Application of the Bill of Rights

If we accept the above reasoning for proper limitations and boundaries, then it becomes apparent that what is true of individuals will be equally true of the associations into which they organise themselves.

Because of the by now proven ability of power to corrupt those entrusted with it, the first instance where safeguards will have to be employed is with the government and its organs and structures. It is the view of the PARTY that the Bill should be applicable, where a person or association in a position of power, has the ability to abuse that position and there is no remedies already to be found in the positive and common law.

It has always been a biblical principle that the weak should be assisted. Care should, however, be taken that, again, in the misguided sense of ensuring equity and -justice, we do not do away with a well-developed legal system that has the practical advantage of having been successfully applied for several centuries.

To provide private individuals unqualified recourse to a Bill of rights arising from their having entered in to the relationships upon which the free-market system and economy rests, could have serious negative consequences on development in this country.

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