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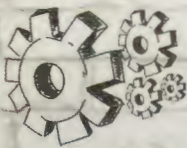
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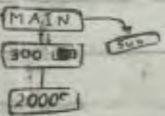
Ease Of Doing Business!

Are Indian Cities Smart Enough?

Pg. 32



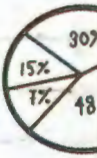
POWER GENERATION



SUCCESS

INVESTMENT

OPTICAL FIBER



internet+



INFRASTRUCTURE

Enforceability Of Contractual
RESTRICTIONS
ON TRANSFERABILITY OF SHARES
Pg. 50

There Can Be No
FUNDAMENTAL RIGHTS
Without Fundamental Duties
Pg. 58



80

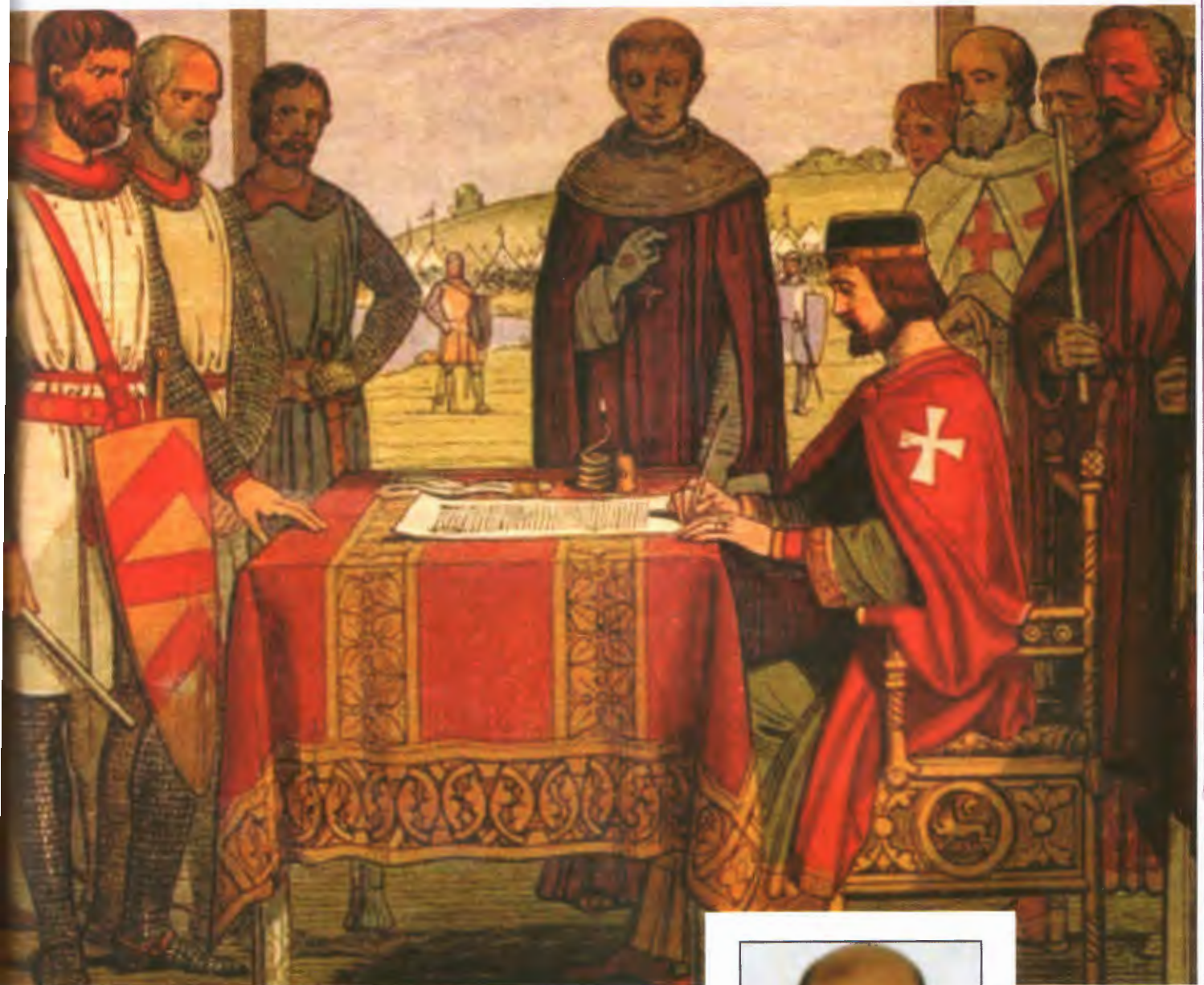
THE Magna Carta



Truly, the document signed, admittedly under duress, by King John in medieval England has become the philosophical root which anchors and nurtures the tree of human rights legislation in civilised societies

As an event that has left its lasting stamp on the history of human rights' jurisprudence, the Magna Carta had relatively mundane origins. It was medieval England and King John, rendered infamous by tales of his cruelty, caprice and cunning had just run into serious trouble. King John had incurred the wrath of Pope Innocent III by refusing to accept the papal appointee, Stephen Langton, as the Archbishop of Canterbury. The barons were fuming over the numerous taxes levied by King John to finance his unsuccessful martial adventures against the French. The disgruntled community of clergy and nobility in arms marched into London and captured the Tower of London. King John hastily sought to make peace and met with the barons and the bishops at Runnymede Meadow, alongside the River Thames, about 20 miles west of London on the Windsor Road.

It was at Runnymede, after parleys, that Magna Carta (the great charter) was drawn up and stamped with the royal seal of King John on 15th June, 1215. The Magna Carta thus became the first ever documented charter of rights ceded by a sovereign to his subjects, albeit grudgingly. The Magna Carta, as signed, had 63 articles, of which Articles 39 and 40 (which survive to this day on the statutes of England and Wales) declared, for the first time ever, that no free man would be imprisoned or dispossessed of his rights and possessions or be proceeded against with force "except by the lawful judgement of his equals or by the law of the land." This provision prompted successive democratic societies to usher in safeguards against arbitrary arrest, trial and incarceration by subjecting such actions to the "due process of the law".



The original Magna Carta was short-lived in those turbulent times and manifested itself in different forms in successive years.

However, it formed the philosophical bedrock on which the edifice of civil rights and liberties has been painstakingly built over the centuries. In his tribute to the Magna Carta, Winston Churchill said:

“Here is a law which is above the King and which even he must not break. This reaffirmation of a supreme law and its expression in a general charter is the great work of Magna Carta; and this alone justifies the respect in which men have held it.”



Udayan Mukerji
Advocate

The eminent jurist, Lord Denning, described the Magna Carta as:

“The greatest Constitutional document of all times – the foundation of the freedom of the individual against the arbitrary authority of the despot.”

The right to personal liberty, enunciated rather verbosely in the Magna Carta, found a pithy echo in the “Declaration of Rights of the Man and the Citizen” which was authored jointly, in August 1789, by the French revolutionary hero Lafayette and Thomas Jefferson (who later became the second President of the United States). The key words were:

“*Men are born and remain free and equal in rights*”

The same year as the French “Declaration”, the still nascent US Congress, taking its cue from the Magna Carta, approved and adopted the “Bill of Rights” on 25 September 1789. The Bill of Rights had 12 Articles which were intended as amendments to the US Constitution. Three of these amendments owe their substance directly to the Magna Carta:

Bill of Rights	Magna Carta
Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.	Article 39: No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.
	Article 28: No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.
Sixth Amendment: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation.	Article 39: No free man shall be seized or imprisoned, except by the lawful judgement of his equals or by the law of the land.
To be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defense.	Article 38: In future, no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.
Eighth Amendment: Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.	Article 20: For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood.

This ideal coupled with the slogan of “Liberté, Egalité, Fraternité” (Liberty, Equality, Fraternity) coined by Maximilien Robespierre (a ruthless stalwart of the French Revolution who himself, later, assumed dictatorial authority) spurred the tidal wave of the revolution that so dramatically – and tragically – ended the monarchy in France.

On 10 December 1948, The United Nations General Assembly, meeting at the Palais de Chaillot in Paris, adopted

the “Universal Declaration of Human Rights (UDHR)”. It represented the first global enunciation of the rights to which all human beings, on this planet, are inherently entitled. The then US President, Franklin Delano Roosevelt referred to the UDHR as the international Magna Carta for all mankind.

The concept of due process of law, as an indispensable adjunct to the life and personal liberty of any person, which stemmed from the Magna Carta, initially failed to find full



expression in the Constitution of India. After much debate, the Constituent Assembly finalised Article 21, in Part III (Fundamental Rights) as:

“Protection of life and personal liberty – No person shall be deprived of his life or personal liberty except according to the procedure established by law”.

The debates show that honourable Members of the Constituent Assembly, accepted Article 21 in the above form (rather than replacing “procedure established by law” with the phrase “due process of law”) only with a good deal of reservation and soul searching.

Frank Anthony, Member, Constituent Assembly, speaking on the subject, stated:

“As a lawyer, I will say quite clearly that this Article 21 which says that a person may not be deprived of his life or liberty except by procedure of law as established, gave me cause for considerable misgivings. I am afraid, that in this form, Article 21, if the Executive and Government of the day choose to, can be abused and made a handle for totalitarian oppression. The Executive can make it a handle for superseding rule of law, they can make it a handle for depriving citizens of the elementary principles of natural justice, and of jurisprudence.”

Thanks to an enlightened judiciary, the trammelling of the right to life and personal liberty, engendered by Article 21,

was set right 28 years after India became a Republic by their lordships of the Supreme Court in *Maneka Gandhi v Union of India*; (1978) 2 SCR 621. In one stroke, the Supreme Court read into Article 21, the ideal of due process by holding that the procedure established by law cannot be arbitrary but should be just, fair and reasonable.

In *Mohd. Arif @ Ashfaq v The Registrar Supreme Court*; WP (Criminal) No. 137 of 2017 – decided on 2 September 2014, the Supreme Court maintained that:


“This Article has its origin in nothing less than the Magna Carta, (the 39th Article) of 1215 vintage which King John of England was forced to sign by his Barons. Strangely, like Magna Carta, Article 21 did not get off the ground for 28 years after which, unshackled, it has become the single most important fundamental right under the Constitution of India, being described as one of a holy trinity consisting of a ‘golden triangle’ (see *Minerva Mills v. Union of India* 1981 (1) SCR 206 at 263), and being one of two articles which cannot be eclipsed during an emergency (Article 359 as amended by the Constitution 44th Amendment).”

Magna Carta, therefore, is by any reckoning the “Grundnorm” propounded by the famous jurist, Hans Kelsen, as the basic norm, order, or rule that forms an underlying basis for a legal system. Truly, the document signed, admittedly under duress, by King John has become the philosophical root which anchors and nurtures the tree of human rights legislation in civilised societies.

About Author: Udayan Mukerji retired from the Indian Police Service after more than three decades of service. He served with distinction at various levels in the government and was entrusted with diverse responsibilities in key areas of national security. He is the recipient of the prestigious Indian Police Medal for Meritorious Service and the President’s Medal for Distinguished Service. Currently, he is a senior partner in the Delhi-based law firm, Bonum Lex LLP.



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