

How Magna Carta came to mean what it was not

Human Rights

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Dawn 27.3.09

“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 other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.”

“To no one will we sell, to no one deny or delay, right or justice.”

This ringing declaration was made on 15 June, 1215, under clauses 39 and 40 of “Magna Carta” which means the Great Charter. 789 years have since passed but these two clauses continue to remain on the Statute Book of England.

The statue of liberty in New York symbolises the struggle and victory of the free men and women, in the United States, against an arbitrary and unjust rule which was imposed on the Americans, two centuries ago. The English statute, containing clauses 39 and 40, quoted above, has, however, come to symbolise the victory of the free men and women everywhere against arbitrary and unjust rule anywhere. Clause 39 became the corner stone

of Habeas Corpus which is today embodied in the constitutions of all civilised states.

For example, article 199 of the constitution of Pakistan provides, *inter-alia*, that if the High Court is satisfied that no adequate remedy is available, it may direct “that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner”.

England, in the early 13th century. In April 1199, King Richard I, known as “Richard the Lion Heart”, died, and was succeeded by his younger brother John. Richard earned his fame on the blood-soaked battlefields of the Crusade, but John made his name by signing a treaty of peace on the lovely green pasture of Runnymede, located at river Thames, near Windsor Castle, in the vicinity of London.

In the England of the early 13th century, many oppressive, and even weird, levies and taxes were in vogue. To give just two examples, a levy called “aid” was imposed whenever the eldest daughter of the King got married. The second example is even more weird. The death of a farmer was an occasion to impose a tax on the deceased farmer’s widow. The

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widow had to pay a tax for getting re-married or for staying unmarried. King John enforced these, and similar, laws, without any trace of compassion or reason.

When pleadings and protests failed to move the stubborn and rapacious King, the Barons who represented the landed aristocracy, rose in revolt and captured London, on 17 May 1215, i.e., about a month before Magna Carta was sealed, on 15 June, 1215.

The capture of London, at last,

which denounced Magna Carta “as unlawful and unjust as it is base and shameful whereby the Apostolic See is brought into contempt, the royal prerogative diminished, the English outraged and the whole enterprise of the Crusade gravely imperilled.” No denunciation could be more devastating (and more untrue) than this.

The papal edict is one of the many instances in history when religious orthodoxy joined hands with secular temporal powers in order to perpetuate their stranglehold on helpless, oppressed human beings. This edict reignited the smouldering civil war between the English landed aristocracy and the King.

Magna Carta would have been assigned a footnote, in small print, in history had the Pope and

One clause (No. 33) pertained to the removal of fish-weirs, and read: “33 - All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.”

Yet another clause (No. 35) related to weights and measures, and read that “there shall be standard measures of wine, ale and corn (the London quartet) throughout the kingdom. There shall also be a standard width of dyed cloth Weights are to be standardised similarly.”

It is, therefore, now clear that, contrary to the popular perception, Magna Carta was not meant to be a universal charter of human rights and liberties. Most of its 63 clauses, which dealt with diverse issues, were primarily aimed at removing the grievances of the English landed aristocracy. A few clauses, quoted above, also addressed the problems of some special interest groups, e.g. the debtors of the Jews. However, the common folk and the poor peasantry remained outside the span of attention of the Magna Carta.

Despite the above obvious and grave limitations, Magna Carta owes its world-wide appeal to the liberal interpretations of the British judiciary and the dedicated efforts of the British lawyers of the 17th century. It is they who raised its status from a charter limited to the feudal interests of the 13th century landed aristocracy to a declaration of the principles of human rights and liberty. It were they who saw in it the origin of the principle of “trial by jury”, and saw to it that this principle is upheld. For this, their focus of attention was clauses 39 and 40 of Magna Carta

the capture of London, at last, forced the King to hold meaningful negotiations with the Barons. The negotiations commenced at Runnymede on 10 June, 1215 and concluded successfully on 15 June, 1215 when the King affixed reluctantly the royal seal to the Magna Carta.

Under clause 61 of the Magna Carta, the King was forced to establish a committee of twenty five barons to monitor and ensure its implementation. Under this clause, he also solemnly pledged that, in case of violation, the barons "may distrain upon and assail (him) in every way possible, with the support of the whole community, by seizing (his) castles, lands, possessions, or anything else saving only (his) own person and those of the queen and (his) children." Under this clause, he further undertook not to "seek to procure from any one anything by which any part of these concessions or liberties might be revoked or diminished."

Ink had not dried on this solemn royal pledge when King John "sought and procured" the help of the celebrated Pope Innocent III against Magna Carta. On 24 August, 1215, the Pope issued a papal edict called "bull"

ty courts; and from 1297, it was also read twice a year in all the cathedrals. Moreover, on the eve of the opening of each parliament, it was read as well as confirmed.

Some of the clauses of the Magna Carta were quaint. Two clauses (No. 10 and 11) were Jew-specific. Clause 10 read, inter alia, that "if anyone who has borrowed a sum of money from the Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains underage". Clause 11 stipulated that "if a man dies owing money to the Jews, his widow may have her dower and pay nothing towards the debt".

Some clauses (No. 50, 58 and 59) were person-specific. For example, clause 50 read, as follows:

"50 — We will remove completely from their offices the kinsmen of Gerard de Athee, and, in future, they shall hold no offices in England. The people in question are Engelard de Cigogne, Peter, Guy and Andrew de Chanceaux, Guy De Cicogne, Geoffery de Martigny and his brothers, Philip Mare, and his brothers, with Geoffrey, his nephew and all their followers."

Magna Carta.

On 10 December, 1948, after a long deliberation of three years, the United Nations adopted the "Universal Declaration of Human Rights". Its four clauses (No. 3, 9, 10 and 17) echo clauses 39 and 40 of the Magna Carta — The Great Charter.

The four clauses are: Clause 3: Everyone has the right to life, liberty and security of person. Clause 9: No one shall be subjected to arbitrary arrest, detention or exile. Clause 10: Everyone is entitled, in full equality, to a fair and public hearing — in the determination of his rights and obligations and of any criminal charge against him. Clause 17: No one shall be arbitrarily deprived of his property.

In the 21st century, it will be interesting to find out as to how many member-states of the United Nations are observing the above four clauses, declared by the United Nations, in 1948, as Universal Human Rights, and guaranteed, 789 years ago, in 1215, in Magna Carta. As charity begins at home, will Pakistan answer this question? ■

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In 1770, the prime minister of England William Pitt the Elder described Magna Carta as the "Bible of the English Constitution", along with the Petition of Rights (1629) and the Bill of Rights (1689).

Luckily, the strip of parchment on which Magna Carta was copied, in June 1215, is preserved, and is on display, in the British Library, London. This sheepskin parchment is 20 1/4 inches long and 13+ inches wide, and according to one account, was found in a London tailor's shop.

It may come as a surprise to many that "Magna Carta" which, for centuries, has symbolized human rights and liberty owes its origin to causes and events which bore little relationship to universal human rights and liberty. This fact is apparent from the lowly place assigned to clauses 39 and 40 in the 63-clause Magna Carta. Buried deep in its text, these two clauses are, however, the soul of this Great Charter, and the cause of its universal fame.

Magna Carta was the culmination of a long, bitter, and, at times, armed struggle, waged by the blue-blooded English landed aristocracy against the King of