

1.1 Human Rights : A Theoretical Perspective

Human rights are commonly understood as being those rights which are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, gender, language, religion, political or other opinion, national or social origin, property, birth or any other status.

Meaning and Definition

The term 'human rights' which is used since World War II, gained importance in contemporary debates and became a universal phenomenon. After the adoption of the Universal Declaration of Human Rights (UDHR) on December 10, 1948 by the United Nations, it was seen by many as a sign of optimism for the better protection, promotion and enforcement of human rights.

In the earlier days, it became difficult to define this concept in absolute terms. Attempts have been made to comprehend the term despite all the complications. To put it simply, "Human rights constitute those very rights which one has precisely because of being a human." Human rights are defined as those rights, which every human being is entitled to enjoy by virtue of being a member of the human species.

Scot Davidson defined "Human Rights as closely connected with the protection of individuals from the exercise of state government or authority in certain areas of their lives. It is also directed toward the creation of social conditions by the state in which individuals can develop their fullest potential."

David Selby defined "Human rights as those rights which pertain to all persons and are possessed by every individual because they are human".

"Human rights" in the words of R.J. Vincent, "are the rights that everyone has by virtue of his very humanity."

In the context of the present study, Human rights can be defined as those rights without which human beings cannot live with dignity, freedom (political, economic, social and cultural) and justice in any nation or state regardless of colour, place of birth, ethnicity, race, religion or gender or any other such considerations. These rights are inherent in human nature and therefore guaranteed and protected by the state without distinction of any sort.

The following are some of the most important characteristics of Human Rights:

- Human rights are founded on respect for the dignity and worth of each person;
- Human rights are universal, which means they are applied equally and without discrimination to all people;
- Human Rights are inalienable, in that no one can have his or her Human Rights taken away other than in specific situations – for example, the right to liberty can be restricted if a person is found guilty of a crime by a court of law;

Human Rights are indivisible, interrelated and interdependent, for the reason that it is insufficient to respect some Human Rights and not others.

1.2 Origin and Historical Development of Human Rights

The expression “human rights” came into use during World War II and the establishment of the United Nations in 1945. However, the idea of human rights is much older. In fact, it goes back to ancient Greece and Rome where it was closely linked with the pre-modern natural law doctrine of Greek Stoicism.

The doctrine of natural rights rests on a belief in “Nature”, as the original creating force, which gave to every man the power of finding by reason the right principles on which to organize his life. Natural rights refer to some conditions, situations or conduct that is right, as opposed to being neutral or wrong for human beings. Even during the times of Plato and Socrates, this idea was linked to the kindred notions of natural law and political idealism. On the basis of these ideas, it was later argued that above and beyond the real world of the laws and rules promulgated by kings and emperors there existed certain immutable and natural laws to which all human beings are entitled and by which rulers should be judged.

In the medieval period, which stretches from 13th century to the Peace of Westphalia (1648), encompassing the period of Renaissance and the decline of feudalism, certain basic changes in the beliefs and practices were witnessed because the people felt the idea of human rights as general social need and reality. It was during this period when resistance to religious intolerance and political-economic bondage began and the real foundation of human rights was truly laid. The Magna Carta (1215), the Petition of Rights (1628), and the English Bill of Rights (1689) were proofs of increasingly popular view that human beings are endowed with certain eternal and inalienable rights. It was only in 17th and 18th centuries that modernist conception of natural law was conceived. During this period, there were many scientific and intellectual achievements. The astronomical discoveries of Galileo and Newton, the materialism of Hobbes, the rationalism of Rene, Descartes and G.W. Leibniz, the pantheism of Spinoza, the empiricism of Francis Bacon and John Locke-encouraged a belief in natural law and universal order.

In 18th century, the so called age of enlightenment, a growing confidence in human reason and in the perfectibility of human affairs led to its more comprehensive expression in the writings of English philosopher John Locke and the works of Montesquieu, Voltaire Rousseau. John Locke, the father of liberalism argued in detail, mainly in writings associated with the Glorious Revolution (1688), that certain rights like right to life, liberty and property self-evidently pertain to individuals as human beings because they even existed in the “state of nature” that is, before humankind entered into civil society. He further argued that while entering into civil society through contact humankind surrendered to the state only the right to enforce these natural rights and not the rights themselves. He also cautioned that if state failed to protect these rights people also have a right to revolt against state. The teachings of these liberal thinkers had a profound influence on the western world. Together with the practical example of England’s revolution of 1688 and the resulting Bill of Rights, the liberal, intellectual ferment had great influence on the western world. Adoption of Declaration was really an event of great significance. The truths to be self-evident that all men are created equal, that they are endowed by (their) creator with certain inalienable rights; that among these are Life, Liberty and the Pursuit of Happiness. Similarly, the French Declaration of the Rights of Men (1789) emphasized that “men are born and remain free and equal in rights,” which are “Liberty, Property, Safety and Resistance to Oppression.” It defined liberty so as to include the right to free speech, freedom of association, religious freedom and freedom from arbitrary arrest and confinement. Another factor, which can be attributed to the development of human rights, was indeed the failure of rulers to respect the principle of freedom and equality. In the words of Maurice Cranston, it was in fact political absoluteness, which prompted men to claim their rights, which were denied to them. The idea of human rights still remained controversial due to its abstractness. It came under severe criticism both from the contemporary liberal and radical circles. The conservatives like Edmund Burke and David Hume in England started questioning the very basis of the doctrine of Natural Rights. They were of the opinion that we can never discover the nature of man, and thus we can never identify human rights. They further condemned the doctrine out of fear that public affirmation of natural rights would lead to social upheaval. They criticized the Declaration of Human Rights of men as “monstrous

fiction” of human equality. Jeremy Bentham, the founder of utilitarianism asserted that, “right is the child of law”, from real laws come real rights but imaginary laws from law of nature, come imaginary rights.” He goes on to the extent of calling it (natural rights) as ‘simply, nonsense, natural and imprescriptibly rights, nonsense upon stills’. This attack on natural law and natural rights intensified during 19th and early 20th centuries by philosophers like J.S. Mill, Friedrich, Karl -Von Savigny, Sir Henry Maine and John Austin. So there existed intense attack on natural rights theory because there was all these assaults the notion of human rights manifested itself in one or the other form. But it was not until the rise and fall of Nazism in Germany that the real meaning was imparted to the ideal of human rights.

Human rights were further developed in the international sphere with the establishment of the League of Nations, after the First World War. The League Covenant made an indirect reference to the welfare of the people governed under the mandate. Article 22 (1) reads “that the well-being and development of such people form a sacred trust of civilization” likewise Article 22 (5) made responsible to the mandatory state to maintain such conditions in the territory will guarantee “freedom of conscience and religion” and “the prohibition of abuses such as slave trade” etc. The contribution of the International Labour Organization under the aegis of the League was equally noteworthy in creating an atmosphere of international involvement in securing fair and humane conditions of labourers. The horrors and worst kind of brutalization of human rights in the World War-II led to the birth and recognition of the modern human rights movement in the international sphere, but it was only after the U.N., hardly any defence for it to be the real rights of men till the First World War. Despite globe. In this connection, the first documentarian use of the expression took place in Universal Declaration of Human Rights and two other international covenants - launched a new era of hopes in the protection and promotion of human rights across the International Covenants on Civil and Political Rights (ICCPR) and International Covenants on Economic, Social and Cultural Rights (ICESCR) of 1966 which came into force in 1976 with the approval of the United Nations

Charter was signed in 1945 that any serious attempt was made to provide comprehensive protection of all individuals against all forms of injustice and human rights violations. The Charter of the United Nations, however, did not define

the content of human rights. For this purpose, the U.N. General Assembly on 10th December 1948 proclaimed the Universal Declaration of Human Rights. It defined specific rights - civil and political as well as economic, social and cultural. It spells out the rights to life, liberty and security of person, to fair trial by due process of law, to freedom of conscience, thought, expression, association and privacy, freedom of movement.

Thus the “20th century brought a new and changing political context for human rights and transformed to philosophical and ideological debate about it. In a way, this historical narration underscores men’s struggle for rights being as old as the history of mankind itself.

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1.3 Theories of Human Rights

In order to have a comprehensive understanding of human rights, a look at the various theories becomes necessary to observe the shifting of priority of rights during the different phases of history. These theories provide the basis to determine the precise subject matter upon which there could be an agreement. An incisive insight into the major theories of rights is as follows: -

1. The Theory of Natural Rights

This is the earliest theory of rights. Its origin can be traced back to the ancient Greeks. According to this theory, rights belong to the man by nature and thus are self-evident truths. They are considered as inborn absolute, pre-civil and pre-social. They can be asserted anywhere and everywhere. Thomas Paine, Grotius, Tom Paine and John Locke, to name a few, are the main exponents of this theory. These theorists derived their ideas about rights from God, reason or a prior moral assumption. To them, every individual possesses a unique identity and is expected to account his actions as per his own conscience.

However, the critics of the natural rights theory argue that rights are not abstract, absolute, or unidentified phenomenon. Liberty, as they argue, lives within restraints. So, restraints upon rights create social conditions where everyone has a share to develop his personality and correspondingly has his obligations to others. Rights and obligations, in fact, are the two sides of the same coin. Despite the above shortcomings, the theory of natural rights inspired the idea that any kind of unjust, arbitrary or oppressive treatment to human beings is an assault upon humanity itself. Apart from this, it also provided the basis, for the English, French and American revolutions, thereby resulting in the Bill of Rights.

2. The Legal Theory of Rights

This theory is a reaction against the theory of natural rights. Advocates of this theory argue that the ideas of natural law and natural rights are abstract

and ridiculous phenomenon. Hence, the existence and enjoyment of fundamental rights of an individual could be better maintained and practiced by the state rather than by the individual himself. Thomas Hobbes, John Austin and Jeremy Bentham are the main propounded of this theory. According to them, rights are purely utilitarian concepts and thus the rule and regulations are necessary for identification and protection of one's rights. Towards this end, every individual has to sacrifice certain rights and freedoms for the general welfare of the society.

This theory has been severely criticized on the ground that law alone does not create rights. Rather, it recognizes and protects them. Customs, traditions and morality also have a basis for rights. However, the truth in this theory lies in the fact that it enables individuals to demand certain specific and recognized rights as granted and guaranteed by the state.

3. The Anti-utilitarian Theory of Rights

There are yet other theorists who strongly argue that priority of well-being of majority as stated by the utilitarian is not prime objective of state. Amongst them Dworkin, Nozic and John Rawls are the leading ones. They hold the view that welfare of majority might lead to detrimental consequences as far as welfare of a particular person or a group of persons is concerned. So there has to be proper reconciliation between the well being of the majority and individual well-being for the better enjoyment of social and individual rights. Today, the demand for right to development on international foray is perhaps the manifestation of this theory.

4. The Legal Realist Theory of Rights

The Legal Realist Theory of Rights is of recent origin. It mainly originated in U.S.A. with the expansion of regulatory activities followed by President Roosevelt's "New Deal Policy." A group of jurists such as Karl Llewellyn, Roscoe Pound and others discussed the point as to what law does, rather than what law is, in a highly complex and industrialized society. These theorists did not propound a common theory of rights. Rather, they considered rights as the end product of both the interaction of prevailing moral values of the society as well as broad-based international sharing of

values. So human rights, as they argue, are nothing but a manifestation of an on-going process rather than a theoretical debate. This kind of a new approach to the concept of rights goes away with problems relating to abstract nature of concept.

However, this theory goes about questioning the existing laws, their values and actions, so far enacted upon society. In other words, it questions the shortcomings and ineffectiveness of the existing laws but does not prescribe any solution in the form of super-value of a human being.

Notions of Human Rights

The notion of human rights is the most important one. It has gained global acknowledgement in the contemporary society. It is the most precious legacy of classical and contemporary human thought and has sought the attention of the people worldwide. While there is an increasingly widespread concern for universal respect and observance of human rights, gross violation of norms continue unabated in almost all parts of the world. Human dignity as the essence of the notion of human rights remains unchanged. It will continue to be so as long as people suffer from disease, hunger, lack of opportunities and denial of the most basic economic, social, political and civil rights. Thus, the challenge of violation of human rights faces the mankind in its stark nakedness. The challenge is global and embraces the whole mankind.

1.4 Concept of Human Rights

Human rights are those moral rights that are morally important and basic, and that are held by every human being because they are possessed in virtue of the universal moral status of human beings. Human rights are one of the significant aspects of human political reality. It is the moral rights of highest order. Human Rights are evolved out of self-respect. It is intrinsic to all humans without any discrimination of race, gender, nationality, ethnicity, language, religion and colour etc.

It received new shape when human beings began to think themselves. Each and every human being is entitled to these rights without any discrimination. Human rights comprise of civil and political rights, such as the right to life, liberty and freedom of expression; and social, cultural and economic rights including the right to participate in culture, the right to food, and the right to work and receive an education.

Human rights are protected and supported by international and national laws and treaties. The Universal Declaration of Human Rights (UDHR) was the first international document that spelled out the “basic civil, political, economic, social and cultural rights that all human beings should enjoy.” The declaration was ratified without opposition by the UN General Assembly on December 10, 1948. Under human rights treaties, governments have the prime responsibility of shield and promote human rights. However, governments are not solely responsible for ensuring human rights. The UDHR states

“Every individual and every organ of society shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures,

national and international, to secure their universal and effective recognition and observance.”

Characteristics of Human Rights

1. **Human Rights are Inalienable:** Human rights are deliberated on an individual due to the very nature of his existence. They are innate in all individuals irrespective of their caste, creed, religion, gender and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.
2. **Human Rights are essential and necessary:** Human rights are needed to maintain the moral, physical, social and spiritual welfare of an individual. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.
3. **Human Rights are associated with human dignity:** To treat another individual with dignity regardless of the fact that the person is a male or female, rich or poor is concerned with human dignity.
4. **Human Rights are Irrevocable:** Human rights are irrevocable as they cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.
5. **Human Rights are essential for the fulfillment of purpose of life:** Human life has a purpose. The phrase “human right” is applied to those conditions which are essential for the fulfillment of this purpose. No government has the power to curtail or take away the rights which are inviolable and immutable.

6. Human Rights are Universal: Human rights are not a domination of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.
7. Human Rights are never absolute: Man is a social animal and he lives in a civic society, which always put certain limitations on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.
8. Human Rights are Dynamic: Human rights are not stationary, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to construe laws in suchways as are in tune with the changed social values.
9. Rights as limits to state power: Human rights infer that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state's power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State.

1.5 Classification of Human Rights

Human Rights broadly can be classified from two different perspectives: Firstly, from the perspective of different aspects of human life, civil, political moral, social, economical; and secondly from the perspective of the ways of securing them. The human rights can be classified as under:

Natural Rights

Natural rights are those rights which are considered to be inherent and integral to human nature. In fact, every individual, by nature, is given an individual property of his own which cannot be taken away by any authority. Such rights include intellectual rights, rights of the mind and also rights of acting as an individual for his own comfort and happiness, provided they are not injurious to the natural rights of others.

Moral Rights

These rights are based on the general principles of firmness and justice. These are simply aspirations and ideals of the people who aim for it. Sometimes, people justify these rights on the ground of the role they perform or the position they occupy in society. For example, the mother of a family might complain that she has the right to be consulted about what is going on in her family. In this case, she is applying the principle that parents are entitled to be consulted when family decisions affect the members. So it is the moral duty of other members to do the same.

Fundamental Rights

There are certain rights which are more important and basic than the others. For example, right to life is the most basic of all rights upon which the enjoyment of other rights depends. Among other basic rights to be recognized as a person before the law, the right to equal protection under law, and freedom from illegal arrest or detention. These rights can never be restricted or taken away by any authority. That is why every society has a fundamental duty to protect these at all times.

Legal Rights

Legal rights are otherwise known as positive rights. These rights are laid down in law. They are also guaranteed and protected by the law of the State. Thus, legal rights are uniform and open to all irrespective of the caste, color, race or culture. Legal rights are those rights which are accepted and enforced by the state. Any defilement of any legal right is punished by law. Law courts of the state enforce legal rights. These rights can be enforced against individuals and also against the government. In this way, legal rights are different from moral rights. Legal rights are equally available to all the citizens. All citizens follow legal rights without any discrimination. They can go to the courts for getting their legal rights enforced.

Legal Rights are of three types:

1. **Civil Rights:**

Civil rights are those rights which provide opportunity to each person to lead a civilized social life. These fulfill basic needs of human life in society, Right to life, liberty and equality are civil rights. Civil rights are protected by the state.

2. **Political Rights:**

Political rights are those rights by virtue of which inhabitants get a share in the political process. These allow them to take an active part in the political process. These rights include right to vote, right to get elected, right to hold public office and right to criticize and oppose the government. Political rights are really available to the people in a democratic state.

3. **Economic Rights:**

Economic rights are those rights which provide economic security to the people. These empower all citizens to make proper use of their civil and political rights. The basic needs of every person are related to his food, clothing, shelter, and medical treatment. Without the fulfillment of these no person can really enjoy his civil and political rights. It is therefore essential, that every person must get the right to work, right to adequate wages, right to leisure and rest, and right to social security in case of illness, physical disability and old age.

Civil and Political Rights

Rights that are granted by government or civil society are called civil and political rights. These rights provide the basis for the fulfillment of elementary conditions of the social life. Without them, civilized life is not possible and they are, therefore, considered very essential for the free and progressive life of man. Civil and political rights, however, include the right to the freedom of speech, of assembly the right to move freely, to hold property and practice trade or profession, and the right to take part in the government of one's country.

Economic, Social and Cultural Rights

These are entitlements of the individual vice versa the State, in order to eradicate social inequality, economic imbalances and to limit disadvantages caused by nature, age and so on. These rights however are bestowed by the State. The State is not bound to meet these entitlements all at once. It depends upon the economic resources of the society.

Most of the socialist states recognize these rights as fundamental rights of the people Right to equality, right to work, right to have family, right to privacy, right to information, right to public assistance during old age and sickness, right to health-care, right to special care during childhood and during motherhood are some of the examples of these rights.

The rights mentioned above do not fully serve the purpose in the sense that rights have tendency to grow with the corresponding changes in the society. Some of the rights are of recent origin like the right to development, the right to know and the right to self determination. There are many controversies regarding the question as to which are the more important rights. The Vienna Declaration issued after a conference in which representatives of 171 countries affirmed that "all human rights are universal, indivisible, inter-dependent and inter-related".

Human and Legal Rights

There is some difference between moral or human rights and legal rights. Legal rights require justification for an existing system of law. Legal rights are, roughly, what the law says they are, so far as the law is enforced. Legal rights gain their force first of all through legislation or decree by a legally authorized authority. Those who support adoption of laws establishing legal rights often appeal to a notion of human rights. Laws against theft might appeal to notions of a moral right to own property. But human or moral rights must gain their validity through some other source other than legal rights, since people can appeal to human or moral rights to criticize the law or advocate changes in the law (or legal rights), and people could not do this if moral rights were based upon the law.

Contractual Rights

Contractual rights originated from the practice of promise-keeping. They apply to particular individuals to whom contractual promises have been made. Contractual rights ascend from specific acts of contract making. They normally come into being when the contract is made, and they reflect the contractual duty that another party has acquired at the same time. As a result of a contract, party A has a contractual duty, say, to deliver some good or service to party B, who has a contractual right to the good or service. Contractual rights may be upheld by the law, and in that sense can rest upon legal rights, but it is possible to conceive of contracts made outside of a legal framework and to rest purely upon moral principles. However, such contracts are less secure than contracts made within a legal framework, for obvious reasons. There are numerous examples of contractual rights such as:

- Rights to purchase a particular product or service
- Rights to be sell a product or service
- Rights to be the only seller or buyer
- Rights to delivery and timely payment
- Rights to refunds or repairs
- Various rights according to the specific intentions of each party.

Collective Rights

Collective Rights are a type of Human Rights, which unlike traditional rights, are not vested in a single individual but belongs to all people so that all of them can collective enjoyed. That is, they are enjoyed jointly rather than severally. Collective Rights are also called Third Generation Rights, Solidarity Rights or New

Rights.

Group rights, also known as collective rights, are rights held by a group rather than by its members severally; in contrast, individual rights are rights held by individual people; even if they are group-differentiated, which most rights are, they remain individual rights if the right-holders are the individuals themselves. Group rights have historically been used both to infringe upon and to facilitate individual rights, and the concept remains controversial.

Collective Rights

- Right to Development.
- Right to Peace.
- Right to Common Heritage.
- Right to Self-determination.
- Right to Safe Environment.

Social solidarity

Solidarity is an element of human association that emphasizes the cohesive social bond that holds a group together, which is valued and understood by all group members. There are different motives for solidarity. For some, affection and shared norms and beliefs are motives, while for others rational choice and self-interest are drivers.

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