



Historical Development of Human Rights

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1. Introduction

The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout the recorded history. It seems that the concept of human rights is as old as the civilization. This is evident from the fact that almost at all stages of mankind there have been a human rights documents in one form or the other in existence. Several ancient documents and later religious and philosophies included a variety of concepts that may be considered to be human rights. Notable among such documents are the Edicts of Ashoka issued by Ashoka the Great of India between 272-231 BC and the Constitution of Medina of 622 AD, drafted by Muhammad to mark a formal agreement between all of the significant tribes and families of Yathrib (later known as Medina). However, the idea for the protection of human rights grew after the tragic experiences of the two world wars. Prior to the world war, there was not much codification done either at the national or the international levels for the protection and implementation of human rights.

This paper seeks to analyse the concept and approaches of human rights and its development even before the Greek times. In this regard, the period has been classified as pre world wars and post war eras. The latter has been further divided into normative foundation, institution building and stage of implementation. Several important documents like Magna Carta, French Declaration of the Rights of Man, UDHR, ICCPR etc. and a brief discussion of various approaches to human rights have been mentioned.

2. Concept of Human Rights

Human rights are the rights a person has simply because he or she is a human being. Human rights are held by all persons equally, universally, and forever. "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." [1] Kant said that human beings have an intrinsic value absent in inanimate objects. To violate a human right would therefore be a failure to recognize the worth of human life. [2] Human right is a concept that has been constantly evolving throughout human history. They have been intricately tied to the laws, customs and religions throughout the ages. Most societies have had traditions similar to the "golden rule" of "Do unto others as you would have them do unto you." The Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius are five of the oldest written sources which address questions of people's duties, rights, and responsibilities.

Different countries ensure these rights in different way. In India they are contained in the Constitution as fundamental rights, i.e. they are guaranteed statutorily. In the UK they are available through precedence, various elements having been laid down by the courts through case law. In addition, international law and conventions also provide certain safeguards.

Human rights refer to the "basic rights and freedoms to which all humans are entitled." Examples of rights and freedoms which have come to be commonly thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; and social, cultural and economic rights, including the right to participate in culture, the right to food, the right to work, and the right to education. "A human right is a universal moral right, something

which all men, everywhere, at all times ought to have, something of which no one may be deprived without a grave affront to justice, something which is owing to every human simply because he is human." Human rights are inalienable: you cannot lose these rights any more than you can cease being a human being. Human rights are indivisible: you cannot be denied a right because it is "less important" or "non-essential." Human rights are interdependent: all human rights are part of a complementary framework. For example, your ability to participate in your government is directly affected by your right to express yourself, to get an education, and even to obtain the necessities of life.

Another definition for human rights is those basic standards without which people cannot live in dignity. To violate someone's human rights is to treat that person as though he or she was not a human being. To advocate human rights is to demand that the human dignity of all people be respected.

In claiming these human rights, everyone also accepts the responsibility not to infringe on the rights of others and to support those whose rights are abused or denied.

Basic Requirements for Human Rights - Any society that is to protect human rights must have the following characteristics -

1. A de jure or free state in which the right to self-determination and rule of law exist.
2. A legal system for the protection of human rights.
3. Effective organized (existing within the framework of the state) or unorganized guarantees.

Classification - Human rights have been divided into three categories:

1. First generation rights which include civil and political rights.
2. Second generation rights such as economic, social and cultural rights.
3. Third generation rights such as the right of self-determination and the right to participate in the benefits from mankind's common heritage,

Human rights may be either positive or negative. An example of the former is the right to a fair trial and an example of the latter is the right not to be tortured.

3. Approaches to Human Rights

The Natural Law Approach – This theory focuses on a natural law that is higher than positive law (law created by man) and to which the latter must conform. Natural law is based on equality. However since it employs means such as the revelation of divine will, transcendental cognition and participation in natural reason, none of its claims can be conclusively confirmed or rejected.

The Historical Approach – This approach views human rights as a function of culture and environment and inculcates space and time factors as well. However, it has three distinct drawbacks. Firstly, it sometimes does not consider the individual as an entity outside of the community. Secondly, it gives more importance to language, religion etc. than the actual views of people. Thirdly, by focusing on the differences between societies, it undermines the universality of human rights.

The Positivist Approach – This approach sees law as enacted by an authoritative sovereign and deriving sanction from coercion. The main disadvantage here is laws would not stem from the will of the people but from that of the sovereign. Obedience would be more easily obtained if sanction came not from force but from laws being based in the values of society. Positivists also see only nations and not individuals as subject to international law, a view that would render ineffective a number of instruments available today.

The **Marxist Approach** – This view comes from the writings of Karl Marx in the context of the 19th century industrial revolution. It posits that in capitalist societies, human rights do not exist. They only come into being in a classless society where there is public ownership of the means of production. This approach too suffers from defects one of which is that it views the development of human rights in a communist society as inevitable and not problematic.

The **Social Science Approach** – This approach locates human rights in the context of larger social processes, dwelling on the community's role in shaping principles. It uses scientific and empirical methods, models and techniques to estimate the degree of success/failure of human rights. It fails however, to provide a clear link between social processes and the law.

4. Human Rights In Pre-World War Era

The roots for the protection of the rights of a man may be traced as far back as in the Babylonian Laws. The development of human rights may be divided into the following periods prior to the two world wars :

Prior to Greek Period – One of the first examples of a codification of laws that contain references to individual rights is the tablet of Hammurabi. The tablet was created by the Sumerian king Hammurabi about 4000 years ago. While considered barbaric by today's standards, the system of 282 laws created a precedent for a legal system. This kind of precedent and legally binding document protects the people from arbitrary prosecution and punishment. The problems with Hammurabi's code were mostly due to its cause and effect nature, it held no protection on more abstract ideas such as race, religion, beliefs, and individual freedoms.

Greek Period – It was in ancient Greece where the concept of human rights began to take a greater meaning than the prevention of arbitrary persecution. Greeks were the first proponent of natural law principles. They gave a conception of universal law for all mankind under which all men are equal and which is binding on all people. Human rights became synonymous with natural rights, rights that spring from natural law. According to the Greek tradition of Socrates and Plato, natural law is law that reflects the natural order of the universe, essentially the will of the gods who control nature. A classic example of this occurs in Greek literature, when Creon reproaches Antigone for defying his command to not bury her dead brother, and she replies that she acted under the laws of the gods

Despite this principle, there are fundamental differences between human rights today and natural rights of the past. For example, it was seen as perfectly natural to keep slaves, and such a practice goes counter to the ideas of freedom and equality that we associate with human rights today.

Roman Period – This idea of natural rights continued in ancient Rome, where the Roman jurist Ulpian believed that natural rights belonged to every person, whether they were a Roman citizen or not. They classified the law of Rome into three broad categories namely; Jus Civile, Jus Genitum and Jus Naturale. The first two were the law of the land based on the third concept (Jus Naturale) which embody the principles of natural law, though not enforceable in the court directly.

The origin of the concept of human rights are usually agreed to be formed in the Greco-Roman natural law doctrines of "Stoicism", which held that a universal force pervades all creation and that human conduct should therefore be judged according to the law of nature

Christian Period – The idea of natural law continue even after Roman period which forwarded the cause of human rights. However, natural law, at this stage was considered as will of God revealed to men by Holy Scriptures. According to Christian father all laws, government and property were the

product of sin and so human laws contrary to law of God were to be discarded and ignored. Church as the exponent of divine law could override the State.

Medieval Age – Human Rights were further promoted in the form of natural law in the middle ages. It was St. Thomas Aquinas who made a classic attempt to harmonise the teachings of the Church with those of natural laws. He distinguished between four kinds of law in his “Summa Theology”. He observed that the law of nature is the discovery of eternal law through reason and reason is the manifestation of religion.

Social Contractualist – The next fundamental philosophy of human rights arose from the idea of positive law. Thomas Hobbes (1588-1679) saw natural law as being very vague and hollow and too open to vast differences of interpretation. John Locke has often been seen as the seminal figure of the development of human rights thinking. He claimed that every man had a right to life, liberty and property. These ideas were based on the idea of rational, equal men and the natural rights provided by God. Governments that continuously violated these rights became tyrannies and lost their legitimacy to rule. The Lockean principles became to fuel the revolutions of the century to come. The concept of natural rights was pervasive in America. The Americans saw the English rule as tyranny that had lost its legitimacy by violating their rights. The American Declaration of Independence certainly reflects Lockean ideals, as it claims it is self-evident that all men (sic) are created equal and thus have a right to life, liberty and the pursuit of happiness. In the Bill of Rights, the set of amendments to the US constitution, these rights are justified by appeal to natural rights grounded in the rights of God.

In the middle ages and later the renaissance, the decline in power of the church led society to place more of an emphasis on the individual, which in turn caused the shift away from feudal and monarchist societies, letting individual expression flourish.

Positivist – After the decline of natural law conception of human rights, positive law evolved and legislation became the main source of human rights. The Prominent writers in this regard are Austin and Bentham. Under positive law, instead of human rights being absolute, they can be given, taken away, and modified by a society to suit its needs. Jeremy Bentham sums up the essence of the positivist view as : Right is a child of law; from real laws come real rights, but from imaginary law, from "laws of nature," come imaginary rights....Natural rights is simple nonsense.

This transfer of abstract ideas regarding human rights and their relation to the will of nature into concrete laws is exemplified best by various legal documents that specifically described these rights in detail:

British Magna Carta (1215) - The English Magna Carta of 1215 granted by King John is very much significant in the development of human rights. The overarching theme of Magna Carta was protection against arbitrary acts by the King. Land and Property could no longer be seized, judges had to know and respect laws, taxes could not be imposed without common council. The Carta also introduced the concept of jury trial in Clause 39, which protect against arbitrary arrest and imprisonment. Thus, Carta set forth the principle that the power of king was not absolute. The Carta was later converted to Bill of Rights in 1689.

French Declaration of the Rights of Man (1789) - The representatives of the French people, organized as a National Assembly, believing that the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments, have determined to set forth in a solemn declaration the natural, unalienable, and sacred rights of man, in order that this declaration, being constantly before all the members of the Social body, shall remind them continually of their rights and duties; in order that the acts of the legislative power, as well as those of the

executive power, may be compared at any moment with the objects and purposes of all political institutions and may thus be more respected, and, lastly, in order that the grievances of the citizens, based hereafter upon simple and incontestable principles, shall tend to the maintenance of the constitution and redound to the happiness of all. Therefore the National Assembly recognizes and proclaims, in the presence and under the auspices of the Supreme Being. Under the Declaration, rights of men and citizens includes guarantee of equality, liberty, free speech and laid down that law is the expression of the general will.

These apart, there are various other documents also reflected the ideas of human rights which helps in its development. In fact, since the beginning of the 19th century it was recognised in the constitutional law of many States that human beings possess certain rights. Worth of human personality began to be realised.

5. Human Rights In Post World Wars Era

Earlier, human beings as such had no rights under the traditional international law, which was defined as the law which govern relations between States. This theory about the nature of international law had a number of consequences as far as individual is concerned like treatment of the individual was limited to the domestic jurisdiction of each State and Stateless person does not enjoyed any protection under traditional international law. However, this theory had exception like intervention of other State on humanitarian ground, limitation of sovereignty by treaty and mandates system under the league of nation.

The idea of human rights emerged stronger after World War II. The extermination by Nazi Germany of over six million Jews, Sinti and Romani (gypsies), homosexuals, and persons with disabilities horrified the world. Trials were held in Nuremberg and Tokyo after World War II, and officials from the defeated countries were punished for committing war crimes, "crimes against peace," and "crimes against humanity." Neither utilitarianism nor scientific positivism, the philosophies that had undermined the natural rights concept, could address the problems. The dominant political paradigm, realism, could not find national interest violated. The language of human rights seemed more appropriate. After the war, the Nuremberg War Crimes Tribunal introduces the subject of gross human rights violations to the international relations. The individual German soldiers were charged of crimes against humanity. The revival of the concept of human rights can thus be seen as a reaction to the horrors of the War. During the next decades, human right movement saw three waves of activism, which can be divided into three phases :

1. Normative Foundation – The first wave got its momentum from the horrors of the World War II. In the aftermath of the war, the United Nations Charter included promotion of respect for human rights and fundamental freedoms among the principal purposes of the organization. The UN moved quickly to formulate international human rights norms. In 1948 the Assembly adopted the Universal Declaration of Human Rights[29] (UDHR).

The UDHR, commonly referred to as the international Magna Carta, extended the revolution in international law ushered in by the United Nations Charter – namely, that how a government treats its own citizens is now a matter of legitimate international concern, and not simply a domestic issue. It claims that all rights are interdependent and indivisible. Its Preamble eloquently asserts that:

“WHEREAS recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.....”

The influence of the UDHR has been substantial. Its principles have been incorporated into the constitutions of most of the more than 185 nations now in the UN. Although a declaration is not a

legally binding document, the Universal Declaration has achieved the status of customary international law because people regard it "as a common standard of achievement for all people and all nations."

During that time League of Nations existed but it was weak and lacked the power to deal with human rights issues and therefore it was expected that the UN Charter shall provide an effective international systems for the protection of human rights but this did not happen because of opposition from the major problems as they had serious problems of their own at that time whereas smaller countries favoured the inclusion of Bill of Rights in the Charter, lacked the political influence. Consequently, the human rights provisions of the Charter as adopted in San Francisco were weak and vague. However, despite the vagueness, the human rights provisions of the Charter had a number of important consequences namely;

- a) The Charter internationalized the concept of human rights, though all the matters did not ipso facto come out of domestic jurisdiction
- b) Secondly, the obligation of the member States of the UN to cooperate with the organization in the promotion of human rights provided the UN with the requisite legal authority to undertake a massive effort to define and codify these rights.
- c) Further, the success of the UN effort is reflected with the adoption of the International Bill of Rights and in the vast number of international human rights instruments in existence today.

2. Institution Building – The 2nd stage in the evolution of international human rights law began in the late 1960s and continued for 15 to 20 years. The second wave of activism was influenced by the newly independent states of Africa and Asia. There were some important conventions and covenants established during the decade: Together with the Declaration the Covenants form the essential written core of international human rights norms. These apart, during this period, two distinct developments took place within the UNs framework. The first focussed on the nature of human rights obligation which article 55 and 56 created for the member States. The phrase “to promote” was somewhat vague but the vagueness was removed by the adoption of ECOSOC resolutions.

With the goal of establishing mechanisms for enforcing the UDHR, the UN Commission on Human Rights proceeded to draft two treaties: the International Covenant on Civil and Political Rights (ICCPR) and its optional Protocol and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the Universal Declaration, they are commonly referred to as the International Bill of Human Rights. In addition to the covenants in the International Bill of Human Rights, the United Nations has adopted more than 20 principal treaties further elaborating human rights. These include conventions to prevent and prohibit specific abuses like torture and genocide and to protect especially vulnerable populations, such as refugees, women, and children . In Europe, the Americas, and Africa, regional documents for the protection and promotion of human rights extend the International Bill of Human Rights. These documents have powerfully demonstrated a surge in demand for respect of human rights. Popular movements in China, Korea, and other Asian nations reveal a similar commitment to these principles.

3. Implementation and the Post Cold War Period – Although the latter half of the 20th century saw a rapid development of human rights norms-setting in international venues, the political agenda of the Cold War did not favour the issue. The human rights issues remained highly polarized and politicized, as the East and West had countering opinions and the South its own views. The third wave was triggered by the revulsion against the overthrow of the Allende government in Chile in 1973, the fact that Covenants of 1966 entered into force and the beginning of the Carter presidency in the US. In the 1970's the US foreign aid was linked to the human rights performance of the recipients. The middle of the 1970's saw also the rise of the human rights non-governmental organizations such as Amnesty International. The end of Cold War freed many nations in Europe from communist rule permitting them to embark on a process of democratic transformation. The end of the Cold War and its effect on

human rights is reflected in part in the text of 1993 Vienna Declaration and Programme of Action adopted at the World Conference on human rights held in Vienna in June, 1993.

The ending of the Cold War in the beginning of 1990's has meant changes in the activity and functioning of the human rights regime. Human rights have become more visible in the political language and the institutions are now more active. It seems there is a new wave of human rights activism going on. Both the General Assembly and Human Rights Commission have become more active. Most importantly, the UN goals of peace-keeping and human-rights protection have become increasingly combined. During the Cold War, genocide in places such as Burundi, East Pakistan and Cambodia were met only by verbal expressions of concern. Now, peace-keepers in El Salvador, Haiti, Guatemala and Rwanda have explicit mandates to investigate human rights violations. Rwanda and Yugoslavia have international tribunals to handle the charges against human rights criminals, first time after Nuremberg.

International human rights commitments is still enmeshed with the complex patterns of international politics, and it is easy to point out cases of janus-faced will to act in some cases and withdraw in some other. The war in Iraq, which was partly justified by human rights claims and the international unwillingness to interfere in Sudan's genocidal civil war is a good example.

However, after the end of the Cold War the international willingness to use the human rights language in international power politics has become larger. Even if this rhetoric hides the true intentions, it tells something about the accepted values of our times.

Governments then committed themselves to establishing the United Nations, with the primary goal of bolstering international peace and preventing conflict. People wanted to ensure that never again would anyone be unjustly denied life, freedom, food, shelter, and nationality. The essence of these emerging human rights principles was captured in President Franklin Delano Roosevelt's 1941 State of the Union Address when he spoke of a world founded on four essential freedoms: freedom of speech and religion and freedom from want and fear. The calls came from across the globe for human rights standards to protect citizens from abuses by their governments, standards against which nations could be held accountable for the treatment of those living within their borders. These voices played a critical role in the San Francisco meeting that drafted the United Nations Charter in 1945.

These apart, the post world war era witnessed a new form of human rights in which has been termed as collective rights or group rights. These rights protect and promote the cause of the vulnerable groups namely; women, children, disabled, minorities etc.

6. Conclusion

Human rights are fundamental to the stability and development of countries all around the world. Great emphasis has been placed on international conventions and their implementation in order to ensure adherence to a universal standard of acceptability. With the advent of globalization and the introduction of new technology, these principles gain importance not only in protecting human beings from the ill-effects of change but also in ensuring that all are allowed a share of the benefits. The impact of several changes in the world today on human rights has been both negative and positive. In particular, the risks posed by advancements in science and technology may severely hinder the implementation of human rights if not handled carefully. In the field of biotechnology and medicine especially there is strong need for human rights to be absorbed into ethical codes and for all professionals to ensure that basic human dignity is protected under all circumstances. For instance, with the possibility of transplanting organs from both the living and dead, a number of issues arise such as consent to donation, the definition of death to prevent premature harvesting, an equal chance at transplantation etc. Genetic engineering also brings with it the dangers of gene mutation and all the

problems associated with cloning. In order to deal with these issues, the Convention for the Protection of Human Rights and Dignity of the Human Being with Regard to the Application and Medicine puts the welfare of the human being above society or science.

However the efficacy of the mechanisms in place today has been questioned in the light of blatant human rights violations and disregard for basic human dignity in nearly all countries in one or more forms. In many cases, those who are to blame cannot be brought to book because of political considerations, power equations etc. When such violations are allowed to go unchecked, they often increase in frequency and intensity usually because perpetrators feel that they enjoy immunity from punishment.

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