

HUMAN RIGHTS: THE GENESIS

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Abstract:

The objective of this article is to bring forth a historical summary of the human rights, through a review of the historical development of Human Rights and the history of Human rights norms. A brief review of the journey of human rights is also performed for a better understanding of the human rights issue. The characteristics of Human Rights, such as its universality and inalienability, equality and non – discriminatory, rights as well as obligation etc. are analysed to understand its efficacy and value. This article further discusses the historical development of Human Rights to understand its postulates through an empirical enquiry of few fundamental questions:

- Why human beings have human rights and what human rights do they have?
- What does it mean by having human rights?
- Is it allowed to subject human rights to limitations, and if so, then what are the reasons for which human rights can be limited?

The Philosophical – legal thought is also pondered upon to envisage its authenticity and applicability. Some landmark historical – legal documents are also examined to establish the genesis and legal inherence of Human Rights as universal rights of every single human – being.

Therefore, these human rights ought to get and secure their place within national and international legal documents.

Keywords: Human rights, international community, humanity, dignity, natural law, legal, Discrimination.

"All human beings are born free and equal in dignity and rights" - Article 1, UDHR.

Introduction

Every person has life and dignity. The norms and principles of human rights have been gradually developed by humanity as a way to confirm that the life and dignity of each human being, without any sort of distinction, is properly and equally revered and developed. In other words, it implies that men are free to develop and utilize human inherent qualities (i.e., intelligence, skills and conscience) and satisfy his physical, emotional and spiritual needs. An individual attains a real sense of worth and value through his life and dignity. However, human life and dignity do not seem to be individualistic, exclusive and isolated concepts; these are rather an integral part of our common human existence. The existence of human rights norms and their implementing mechanisms proves that people are well aware of each individual's worth and value.

We start to possess certain rights from the very moment of our birth or even before, these rights are termed as "*HUMAN RIGHTS*". Human Rights have its historical predecessors in numerous international doctrines and institutions.

Human rights are guaranteed to every person on the basis of his existence as a human-being and they cannot be alienated, which means that they cannot be taken away from anyone. Human rights change and adjust accordingly, over time. Human rights are essential because they protect us as persons. Disregarding someone's right cannot be justified even if it is for the good of others. Human rights cannot be the subject of political guessing. The person who has the human right can only decide on whether he will exercise it or will get rid of it completely. The protection and realization of human rights is one of the most complex issues in the international community.

Basically and essentially, human rights are the ‘claims’ of an individual for such favourable conditions and friendly environment that is essential for the fullest actualization of the innate characteristics which the kind nature has very graciously bestowed upon it as an individual human being.¹

It seems from a more in-depth study of recent history that in terms of evolution of human rights, the subsequent parallel foundational trends to have gradually evolved over the years and achieved landmarks within the European context:

- The rise of Protestantism after Martin Luther (1546 AD) and the belief in popular sovereignty and liberal democracy;
- The liberalist tradition championed by philosophers like Hobbes (1679 AD), Locke (1704 AD), Montesquieu (1755), Rousseau (1778 AD), Bentham (1832 AD) and John Stuart Mill (1873 AD).
- Political landmarks like Magna Carta (1215AD), American Declaration of Independence (1776 AD), French Declaration of the Rights of the Man and of the Citizen (1789), Bolshevik Revolution in Russia (1917 AD) and Universal Declaration of Human Rights (1948) etc.

Historical Development of Human Rights

The idea of human rights has its roots in *Greece philosophy of ‘Antiquity’*. Already in ancient Greek philosophy, (i.e. more than 2000 years ago), it was developed by the idea ‘*equality of all people*’, which implies, the idea of natural law that belongs to every man. That tradition natural law experienced its further development in early Christianity and other religions - *God created all people as equals and as a model of himself*, and this initiated in forming the root of the idea of human rights.

The theory of human rights can be understood by empirically enquiring the following:

1. Why human beings have human rights and what human rights do they have?
2. What does it mean by having human rights?
3. Is it allowed to subject human rights to limitations, and if so, then what are the reasons for which human rights can be limited?

The objective is to ponder upon the historical development of human rights, their contents, and examine their existence with regard to conditions and circumstances of the modern world, in which we live. Namely, scientific and technical revolution; population growth and its densification in cities; industrial growth and production; warring nations; and the entire activity of humanity that started as a strong supernatural force to change the shape of our planet and to have a harmful effect on the environment. In this way the survival of many plant and animal species and the survival of man have been put to a great risk. Today, anthropogenic activity encompasses the entire biosphere and thus became a global danger for the entire planet.

Characteristics / The Basic Tenants of Human Rights

➤ ***Universal and Inalienable***

The principle of universality of human rights is the foundation of the *International Human Rights Law*. This principle, as initially stressed, in the *Universal Declaration on Human Rights* in 1948, has been reiterated in various conventions, declarations, and resolutions related to international human rights.

The Vienna World Conference on Human Rights (1993), noted that it is the duty of States to promote and protect all human rights and fundamental freedoms, regardless of their political, economic and cultural systems. Every member State has ratified at least one, and about 80% of States have ratified more than four core human rights treaties, reflecting consent of States which creates legal obligations for them and giving concrete expression to universality of human rights. Some fundamental human rights norms enjoy universal protection by *customary international law* across all boundaries and civilizations. Human rights are inalienable. They cannot be taken away, except in specific situations and according to due process of law. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

➤ ***Interdependent and Indivisible***

All human rights are indivisible, whether they are *civil or political rights* - such as the right to life, equality before law and freedom of expression; *economic, social and cultural rights* - like the right to work, social security and education; or *collective rights* - like the right to development and self-determination; are indivisible, interrelated and interdependent. The development of a single right facilitates the advancement of the others. In the same manner, the deprivation of a single right adversely affects the other rights.

➤ ***Equal and Non - Discriminatory***

Non-discrimination is supposed to be a cross-cutting principle in *International Human Rights Law*. The principle of equality and non-discrimination can be found in almost every human rights treaty and provides the central theme to a number of international human rights conventions -like the *International Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of All Forms of Discrimination against Women*, etc. The principle of equality and non-discrimination complements each and it prohibits discrimination on the premise of an inventory of non-exhaustive categories like sex, race, colour etc. The principle of non-discrimination is complemented by the principle of equality, as stated in *Article 1* of the *Universal Declaration of Human Rights*, “*All human beings are born free and equal in dignity and rights.*”

➤ ***Rights as well as Obligations***

Human rights entail rights as well as obligations or duties. States assume obligations and duties under international law to respect, to shield and to enforce human rights. The duty to respect implies that States should refrain from using intrusive measures or diminishing the enjoyment of human rights by individuals. The duty to protect needs States to protect people and communities against human rights abuses. The duty to fulfil implies that States should take positive action to facilitate the enjoyment of fundamental human rights. We are entitled to enjoy our human rights at the individual level, but on the contrary we should also respect the human rights of others.

Philosophical - Legal Thought

Ancient philosophical and legal thought portrays the concept of rights in the sense of justice and law, but they ignored the concept of rights in the sense of authorization. Many philosophers have dealt with the topic of human rights. The English philosopher *John Locke* (1632-1704) was one of such pioneer. For him, *right to life, liberty and private property*, are immovable and inalienable human rights. The purpose of every state is to protect the *natural human rights*. He with his political philosophy, obliges the state to protect human rights, makes a decisive move from the abstract idea of human rights to its concrete achievements, within the state in the form of rights guaranteed by it. Locke also defends the principle of constitutional limitation of state power and legal resistance.

John Locke states three natural laws.

- The first and fundamental law of nature is sustaining humanity. God created all people for a specific purpose; a necessary condition that people achieve to continue living.
- The other natural law is the maintenance of society, from which follows the duty of man to maintain society.
- The third natural law expresses man's duty to worship and praise God.

While the first two are natural law and is the basis for natural rights, it is the third natural law which forms the basis for Christian life of an individual, and has no direct role in determining human rights.

The preservation of every human being entails three natural rights:

- *legal maintenance,*
- *the right to freedom of maintenance of oneself, and*
- *the right to material goods necessary for one's maintenance*

In the state of nature, according to Locke, these demands of life, liberty and property are shaped and regulated in a natural way. The legislator fulfils their duty to achieve the common good by maintaining life, liberty and possessions. These ideas of John Locke were accepted by the constitutionalists in England and the United States of America and thus incorporated them in its basic legal documents.

Historical – Legal Documents of Human Rights

As early as 1215, the English nobility, through *Magna Charta*, took away certain rights from King John without extortion. The document of *Petition of Rights* (1628) guarantees the inviolability of the citizen, while the *Habeas Corpus Act* (1679) was a turning point for establishing the idea of human rights in specific state law. This act protected a citizen from arbitrary arrest and prosecution. These rights were also valid in the English colonies, and in the United States of America. During the struggle for independence in the USA, 'the Catalogue of Human Rights' was formulated for the first time in history. This list of human rights directly referred to the ideas of the English philosopher and champion of individual rights, *John Locke*. The *Virginia Bill of Rights* (1776), along with the document on the American Declaration of Independence, in the same year, are most important documents in the history of human rights.

In the *Virginia Bill of Rights*, the following rights were declared *Inalienable Human Rights* and constituted the core of human rights:

- right to life;
- freedom and privacy of ownership;
- freedom of assembly and freedom of the press;
- freedom of movement and the right to petition;
- the right to legal protection ;
- voting right

Regarding the *American Declaration of Independence* on July 4, 1776, The Philadelphia Congress, where representatives of 13 American colonies gathered together, announced the so-called *Proclamation of Independence*.

Thomas Jefferson did formulate these words, "We respect the following truths as self-explanatory: that all men are created equal; that their Creator gave them certain inalienable rights, which include life, liberty and pursuit of happiness," which means that these rights cannot be taken away from anyone. Human rights are necessary because they protect us as persons.

The constitutional-legal realization of the idea of human rights germinated in Europe from France. The *French revolution* in 1789 had its own idea of liberty, equality, and fraternity which strongly influenced the development of human rights. It was in the same year that the *Charter of Human and Civil Rights* was accepted. The aforementioned charter was an attempt to emphasize the universal importance of human rights. Political and legal realization of the philosophical idea of human rights was achieved to a great extent by the middle of 20th century.

Conclusion

Adopted on December 10, 1948, by the *United Nations Organisation*, the *Universal Declaration on Human Rights* was promulgated.

It came after the discovery of the heinous war crimes committed by the *Nazis* (Germany) during the Second World War. The International community wanted to prevent similar crimes in the future. This declaration marks the beginning of an attempt for universal political and legal implementation of human rights. In this Declaration, for the first time in human history, an international political organization based on the recognition of human dignity was formulated and proclaimed human rights as the guiding norm and basis of its activity.

Human rights are rights innate to all human beings irrespective of place of birth, place of residence, sex, national or ethnic origin, colour, religion, language, etc. Every single human individual is equally entitled to enjoy human rights without any sort of discrimination. These rights are interrelated, interdependent and indivisible. Universal human rights are expressed and secured by law, within the peripheries of treaties, customary law of nations, general principles and various other sources of international law. *International Human Rights* in a way compels national governments to act in a desired manner or to refrain from certain acts in order to promote and protect Human Rights and fundamental freedoms of individuals or groups.

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