

DEVELOPMENT OF HUMAN RIGHTS UNDER THE AEGIS OF THE UNITED NATIONS: AN OVERVIEW

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Abstract

The commendable efforts of the United Nations in the development of Human Rights at global level has ultimately been culminated into the adoption of a historic document the “Declaration on Human Rights” – the “Universal Declaration of Human Rights” (UDHR) and also the two covenants on human rights – the “International Covenant on Civil and Political Rights” (ICCPR), 1966 and the “International Covenant on Economic, Social and Cultural Rights” (ICESCR), 1966. An array of human rights, as contained in these instruments, treaties and national legislation are very wide and covers a variety of rights including traditional civil and political rights on one hand and socio-economic rights, on the other. The United Nations has emphasized that all Human Rights and fundamental freedoms are inalienable and inter-dependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights, which is the need of the hour.

1. Introduction

Human Rights are inherent in humans irrespective of cultural or economic differences. They refer to the inalienable nature of the rights and in that sense “precede” the state’s authority. We may say that it provides us with idea of natural individual rights. Each individual has human rights on the basis of his/her humanity. Therefore, these rights inalienable by a decision of the authorities than by his/her own consent. The inalienability of human rights also means that a person cannot legally give away over his/her human rights by selling himself/herself as a slave.[1] Human rights are often described as the inherent rights of every individual. In the 18th and 19th centuries in Europe several philosophers proposed the concept of “natural rights”, rights belonging to a person by nature and because the idea of human rights draws on the general idea of rights.[2] This concept is seemed to be the basis for the formulation of the underlying principle on which all the ideas of citizens’ rights and political and religious liberty were based.[3]

2. Concept of Human Rights

The concept of human rights is derived from the concept of rights. In order to understand philosophical foundations of concept of human rights, it is essential to know the distinction between moral rights and legal rights. Legal rights refer to all those rights found within the existing legal framework and it is a right that enjoys the recognition and protection of the law. The question about the existence of a legal right can be easily answered by the presentation of a legal instrument. On the other hand moral rights are not rights in the strict sense, but are better thought of as moral claims, which may eventually be assimilated within national or international law. This means that it is the legal codification that endorses the very evidence of the human rights; legal rights codifying the rights in 'human' way as it was .[4] Thus, moral rights are rights that exist prior to and independently from their legal counter parts. The existence and validity of moral rights is not deemed to be dependent upon the actions of jurists and legislators. One should believe that fundamental rights which may have received legal recognition elsewhere, remained valid and morally compelling even in those countries whose legal systems have not recognized these rights.[5] Therefore, it appears that human rights are best identified as moral rights. Theory of 'Inalienable Rights' (the Lockean theory), naming life, liberty and property as the rights which were kept with themselves by the members of the natural society while entering into '*contractus subjectinis*' with their political sovereign. Equality amongst men by nature, with the ingredients of "justice" and "charity" within it, propounded by John Locke which is the fundamental principle of the society. And it is the principle of justice and equality around which the entire gamut of human rights revolves.[6]

3. Historical Development of Human Rights

According to their historical background, human rights are more a philosophical or moral concept rather than a legal one. The origins of today's human rights ideology can be found in 17th century liberalism[7]John Locke (1632-1704), among others, developed the idea of rights that precede the state and the guaranteeing of which is the basis of the State's authority[8]Humankind's earlier history of thought also contains doctrines and theories on fundamental rights.

Although at the end of World War-I, some attempts on modest level were made through the Treaty of Versailles to promote and universalize human rights but it met with no success. Since the judicial conscience of the civilized world was very much in the favor of safeguarding the rights of individuals against its violation by States, it was consistently realized that the rights of individuals must be universalized so that it may be guarded against its violation by one's own State. Influenced by such desires, the Institute of International Law (IIL), initiated measures to study and formulate the human rights provisions. The IIL was a private organization whose members were elected from the authorities in international law in Europe, America, and Asia. Its pronouncements had no validity except the prestige of the members which they held. The main object and aim was "to extend to the entire world international recognitions of the rights of man".[9] Accordingly, a

proclamation of the rights of man was issued[10] and adopted by the IIL containing six Articles; where in the duties of every State has been prescribed which are as follows:

- i. To recognize the equal rights of every individual to life, liberty and property and to accord to all within its territory the full and entire protection of this right without distinction as to nationality, sex, race, language of religion.[11]
- ii. To recognize the right every individual to the free practice, both public and private, of every faith, religion or belief, provided that the said practice shall not be incompatible with public order and good morals.[12]
- iii. To recognize the right of every individual both to the free use of the language of his choice and to the teaching of such language.[13]
- iv. To recognize that no motive based directly or indirectly on distinction of sex, race, language or religion, empowers States to refuse to any of their nationals, private and public rights, especially admission to establishment of public instruction, and the exercise of the different economic activities, and of professions and industries.[14]
- v. To recognize that the equality as contemplated herein is not to be nominal, but effective. It excludes all discrimination direct and indirect.[15]
- vi. To recognize that except for motives based upon its general legislation, no State, shall have right to withdraw its nationality from those whom for reasons sex, race, language, or religion, it should not deprive of the guarantees contemplated in this proclamations.[16]

Thus, the proclamation states in bold and unequivocal terms the rights of human beings, without distinction of nationality, sex, race, language and religion, to the equal right to life, liberty and property, together with all the subsidiary rights essential to the enjoyment of these fundamental rights[17]. It aims not merely to assure to individuals their international rights, but it aims also to impose on all nations a standard of conduct towards all men including their own nationals. The proclamation, being the will of the members of the Institute, did not impose any obligation on the States. The proclamation may be regarded as the first attempt towards the universalization of human rights. [18]

Another milestone in the universalization of human rights, of course, in disguise, was oppressive and brutal practices adopted by Nazi regime in Germany. The individuals on the ground of their race or religion were subjected to persecution, tyranny and brutality. They were deprived of their civil and political rights. It caused global concern for the protection and promotion of human rights universally, and with the progress of the World War-II deep concern was shown for the international recognition of human rights and for establishment of world organization for the protection and promotion of human rights. It was believed that no permanent peace could be established without securing international safeguards of “human rights” and “fundamental freedoms”.[19]

Human Rights movement greatly picked up momentum after the World War-II. During the World War II, the whole world was shocked due to heinous crime committed against the humanity and human rights were totally suppressed. Nazi leaders of Germany had established a regime of complete lawlessness and tyranny. They had barbarously negated human values and dignity within their territories under their occupation. Human rights and their violation is the root cause of the international conflicts and the protection of human rights was regarded and considered as necessary for international peace. It was at that time realised that the restoration of the freedoms and rights to the people is one of the essential conditions for the establishment of international peace and security. This conviction was reflected in the Proclamation issued by the President Franklin D. Roosevelt on 6th January, 1941. We know it has reference to “Four Freedoms” they are basically, 1. freedom of speech, 2. Freedom of religion, 3. freedom from want and 4. freedom from fear. As a message he propounded that “Freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain these rights or keep them.”.[21]

The efforts for the creation of an international organisation, in order to establish peace, were being made even when the World War II was in being. A number of conferences and meetings were held before the United Nations, an international organisation, was established in 1945. Many declarations adopted by the conferences laid down the importance of human rights. The term ‘human rights’ historically first time used in the Declaration of the United Nations which was declared and signed on January 1, 1942 at Washington. In this document the signatories who were fighting against the Axis Powers recognized the need in the following words “to preserve human rights and justice in our own land as well as in other lands”. The Declaration confirmed the principles of the Atlantic Charter when it proclaimed that the protection of human rights in all countries was to be one of the results which were desired to be obtained from the victory over the Axis.

4. Universalization of Human Rights and the Role of United Nations

Beginning with the adoption of the historic Declaration on Human Rights, the Universal Declaration on Human Rights and the years that followed it, has witnessed the embodiment of these rights in various international human rights instruments, such as, International Covenant on Civil and Political Rights, 1966 and International Covenant on Economic, Social and Cultural Rights, 1966; regional human rights treaties, such as, the European Convention on Human Rights and Fundamental Freedoms, the American Convention on Human Rights, the African Charter on Human and Peoples rights; subsidiary instruments, such as, the Helsinki Final Act; and national Constitutions, legislations and even judicial pronouncements. The range of human rights, as contained in these instruments, treaties and national legislation are very wide and covers variety of rights including traditional civil and political rights on one hand and other socio-economic and cultural rights, on the other.

The purposes of securing human rights are to provide protection to these rights against the abuse of power committed by the organs of State; to establish institution for the promotion of living conditions of human beings and for the development of their personality; and at the same time, to provide effective remedial measures for obtaining redress in the event these rights are violated.[20] In this regard Karel Vasak has aptly remarked that the

“human rights which are essentially individual in character, for they are meant to be enjoyed by individuals, constitute a social phenomenon by virtue of those for whom they are intended.”

As a sequel to its commitment towards the promotion of Human Rights, reflected in the Preamble and various provisions of the Charter, the General Assembly of the United Nations took a vast step forward when the Universal Declaration of Human Rights was proclaimed by it on 10th December 1948 (since then it was observed as “Human Rights Day”) without a dissenting vote. Although not legally binding in itself, it has proved to be the starting point of a new legal order in the world. Much of it is now customary law and a major part of the Declaration has become part and parcel of the national Constitutions of over 30 new States. More significant, perhaps, it laid the foundations of a wide range of Covenants and other international legal instruments which are binding, when ratified, on national Governments.[21]

The Universal Declaration was humanity’s unanimous response to the Nazi death camps, the fleeing refugees, and tortured prisoners of war of the World war-II. But it was not a once-for-all reaction. It was, in fact, conceived from the start as a global ‘Bill of Rights’ to be implemented by two legally enforceable Covenants: the Covenant on Economic, Social and Cultural Rights, 1966 and the Covenant on Civil and Political Rights, 1966. Both of these came into force following 35 ratifications for both in 1976. So the international law of human rights is really quite recent. The two United Nations Covenants had at last, however, laid down the legal foundation for a world order of human rights.

The historic Document, that is, Universal Declaration of Human rights, 1948, has been proved to be the guiding spirit for the adoption of several treaties and Conventions by the international community towards protection of Human Rights of various classes of people like men, women, children, labour, etc. Following are some of the Land mark Conventions which deal with Human Rights of various dimensions:

- i. International Covenant on Economic, Social and Cultural Rights, 1966;
- ii. International Covenant on Civil and Political Rights, 1966;
- iii. International Covenant on the Elimination of all forms of Racial Discrimination, 1966;
- iv. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1987;
- v. Convention on the Elimination of all forms of Discrimination against Women, 1979;
- vi. Declaration on the Right to Development, 1987;
- vii. Convention on the Rights of the Child, 1990;
- viii. The Vienna Declaration and Programme of Action, 1993.

The Universal Declaration of Human Rights, 1948 has laid down a common standard of achievement for all people and nations, to the end that every individual and every organ of society should keep this Declaration as a paramount document and see that it shall be used to teach and educate the people to respect individual

freedom so that everyone shall strive to promote these rights in national and international level. The United Nations has codified number of human rights in treaties for all sections of the people such as women, child, migrant workers and refugees. Apart from striving for the prohibition of the commission of inhuman acts such as genocide and apartheid etc..

It is significant to note that following principles are the basis or foundations upon which all the aforesaid Declarations and Conventions are based:

- i. All Human beings without distinction have been brought within the scope of Human Rights Instruments.
- ii. Equality of application without discrimination of race, sex, language, religion;
- iii. Emphasis on international cooperation for implementation.

The United Nations has emphasized that all Human Rights and fundamental freedoms are indivisible and inter-dependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of all socio economic rights

5. Conclusion

Human rights, in the present political system, are to be characterised as universal, inalienable and fundamental. The universality of human rights has two meanings. On the one hand, the universality of human rights prohibits discrimination on the grounds of sex, colour, social status or other similar characteristic. This is why the prohibition of discrimination is included in the Universal Declaration of Human Rights (Article 2) and in almost all other international human rights Conventions. Therefore it can be said that concept of viewing the human rights as rights belonging to all people has firmly established and developed under the aegis of the United Nations.

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