

CONCEPT OF HUMAN RIGHTS, ORIGIN AND EVALUATION OF THE CONCEPT

Unit structure

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~~10.0 OBJECTIVES~~

- 1) To understand the Concept of Human Rights.
 - 2) To study the Universal Declaration of Human Rights.
 - 3) To relate Human Rights Constituents with special reference to Fundamental Rights in Indian Constitution.
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~~10.1 INTRODUCTION~~

Human Rights are commonly understood as ‘inalienable fundamental rights’ to which a person is inherently entitled simply because she or he is a human being. Human Rights are thus conceived as universal and egalitarian. At the international level human rights have become a movement. It can be studied through many ways which is called as the constituents of Human Rights. They may be civil rights, political, economic, cultural, social rights. They are also called somewhere Fundamental Rights. Being a humankind one must have some rights from birth and hence they are the birth rights of every human being. They are also the rights of freedom to everyone irrespective of caste, creed, sex, region, colour, profession, etc.

~~10.2 CONCEPT OF HUMAN RIGHTS~~

Human Rights is a 20th century term for what had been traditionally known as ‘Natural Rights’ or in a more appealing

phase, the 'Rights of Man'. The notion of 'Rights of Man' and other such concepts of human rights are as old as humanity. These rights of men had a place almost in all the ancient societies of the world, through they were not referred to by that time.

The term 'Human Rights' is comparatively of recent origin. But the idea of human rights is as old as the history of human civilization. Human Rights are deeply rooted in the historical past. The history of mankind has been firmly associated with the struggle of individuals against injustice, exploitation and disdain.

Broadly speaking, 'Human Right' means right to life, liberty, equality and the dignity of an individual irrespective of caste, creed or sex. Human rights are always natural. Universal Declaration of Human Rights states, this term signifies the rights which belongs equally to every individual. It envisages that all human beings are born free, equal in dignity and rights and are entitled to enjoy all rights.

According to Prof. Herald Laski "rights are those conditions of social life without which no man can seek in general to be himself at his best".

In view of Dr.B.R.Ambedkar, "Fundamental Rights are the gift of law. They are essential for human beings. They are inalienable and enforceable by the State." His theory of Fundamental Rights is related with the political democracy which rests upon four 'premises' which could be stated as under.

1) "The individual is an end in himself. "

All the institutions either social or political are the instruments to serve the end of the individual. An individual is not for the state; but as an ideal citizen must serve the common interest embodied in the state. The 'end' or the welfare of the individual includes the development of his physical, mental and material abilities which could be able to enhance his pursuit of happiness.

2) "That the individual has certain inalienable rights which must be guaranteed to him by the Constitution."

This means no person or authority should encroach, abridge or abrogate the rights of the individual in the society. There is no better guarantee of those rights other than the Constitution.

3) “That the individual shall not be required to relinquish any of his Constitutional rights as a condition precedent to the receipt of a privilege.”

According to Dr.B.R.Ambedkar, “the rights of the individual being inalienable and constitutional, no one could be required to relinquish any right at the cost of any privilege. However, rights of individual be abridged or abrogated only with due process of law.”

4) “That the state shall not delegate powers to private persons to govern others.”

According to him, the state would be supreme and powerful to govern the people. There would not be any intermediary or private person like hereditary ruler or Jahagirdar. All the individuals would be legally equal and enjoy equal treatment under the state.

10.2.1 History of Human Rights:

The roots of human rights can be traced to the Babylonian laws. The Babylonian King Hammurabi issued a set of laws to his people called ‘Hammurabi’s Codes’, which contained fair wages, protection of property and charges against them to be proved at trial. Greek philosopher Plato, Aristototele and Roman philosopher Cicero advocated the natural law, natural rights and human rights.

According to Cultural dictionary human rights can be defined as ‘freedom from arbitrary interference or restriction by governments.’ The term encompasses largely the same rights called civil rights or civil liberties but often suggests rights that have not been recognised.

The origin of human rights also can be credited to era of Renaissance Humanism in the early modern period. Prior to this habeas corpus had been explained in the Magna Carta of 1215 A.D. The European wars of religion and the civil wars of 17th century England gave rise to the philosophy of liberalism and belief in human rights became a central concern of European intellectual culture during 18th century ‘Age of Enlightenment’. The idea of human rights lay at the core of the American and French

revolutions A.D.1776 & A.D.1789 respectively which paved the way for the advent of universal suffrage. The World Wars of the 20th century led to the Universal Declaration of Human Rights.

A declaration for religious tolerance on an egalitarian basis can be found in the 'Edicts of Ashoka', which emphasise the importance of tolerance in public policy by the government. The slaughter and capture of prisoners of war was also condemned by Ashoka.

According to historian John Esposito, Prophet Muhammad condemned female infanticide, exploitation of poor, usury, murder, false contracts and theft. He also incorporated Arabic and Mosaic laws and customs of the time into his divine revelations. The Constitution of Medina (Charter of Medina) established the security of the community, freedom of religion, security of women.

The modern sense of human rights can be traced to Renaissance Europe and Protestant Reformation, as also the disappearance of the feudal authoritarianism and religious conservatism that dominated the Middle Ages. According to Jack Donnelly, in the ancient world, "traditional societies typically have had elaborate systems of duties...conceptions of justice, political legitimacy and human flourishing that sought to realize human dignity, flourishing or well-being entirely independent of human rights." Then Magna Carta (1215) was related to General Charter of Rights. The statute of Kalisz (1264) gave privileges to the Jewish minority in the Kingdom of Poland. In 1525, in Germany, the Peasants put their 'Twelve Articles' i.e demands towards the 'Swabian League' in the German peasant's war. In Britain in 1683, the English 'Bill of Rights' or Act Declaring the Rights and Liberties of the Subject and settling the 'Succession of the Crown' and the Scottish Claim of Right each made illegal a range of oppressive governmental actions.

Next traces of human rights found in the revolutions of 1776 (American Revolution) and 1789, French Revolution leading to the adoption of the United States Declaration of Independence and the French Declaration of Rights of Man and of the Citizen respectively both of which established certain legal rights. Additionally, the Virginia Declaration of Rights of 1776, encoded into law a number of fundamental civil rights and civil freedoms. These were then

followed by developments in philosophy of human rights by philosophers such as Thomas Paine, John Stuart Mill and G.W.F Hegel during 18th and 19th centuries. The term human rights probably came into use some time between Paine's 'The Rights of Man' and William Lloyd Garrison's 1831 writings in 'The Liberator' in which he stated that he was trying to enlist his readers in 'the great cause of human rights'.

In the 19th century human rights became a central concern over the issue of 'slavery'. In Britain William Wilberforce worked towards it and the result was that Britain passed Slave Trade Act, 1807 and 'Slavery Abolition Act, 1833. In America Northern States already abolished slavery and Southern states did it later. In the 20th century we find many such human rights movements in one form or another such as labour unions and their rights for labour in North America. The Women's rights movements also were started in many countries. In India Mahatma Gandhi's movement to free the natives and Dr.B.R.Ambedkar's movement of liberation of Depressed Classes within Hindu Community are also noteworthy so far as the Human Rights are concerned.

The establishment of the 'International Committee' of the Red Cross the 1864 'Lieber Code and the first of the 'Geneva Conventions' in 1864 laid the foundations of 'International Humanitarian Law'. The huge losses of human life and gross abuses of human rights that took place during World Wars developed the modern human rights instruments. The League of Nations was established in 1919 and its goals included disarmament, preventive war through collective security, settling disputes between countries through negotiation and diplomacy and improving global welfare. Enshrined in its Charter was a mandate to promote many of the rights later included in the Universal Declaration of Human Rights.

At the 1945 Yalta Conference, the Allied powers agreed to create a new body i.e United Nations that now make up international humanitarian law and international human rights law.

10.2.2 Philosophy of Human Rights:

The philosophy of the human rights attempts to examine the underlying basis of the concept of human rights (which have already discussed in 10.2) and critically looks at its content and jurisdiction. Several theoretical approaches have been advanced to explain law and why human rights have become a part of social expectations.

One of the Western philosophies of human rights is that they are a product of a natural law, stemming from different philosophical or religious grounds. Other theories hold that human rights codify moral behavior which is a human social product developed by a process of biological and social evolution as held by David Hume. Human rights are also described as a sociological pattern of rule setting as theorized by Max Weber. These approaches include the notion that individuals in a society accept rules from legitimate authority in exchange for security and economic advantage as according to John Rawls as a 'Social Contract'.

The two theories that dominate contemporary human rights discussion are the 'Interest theory' and the 'Will theory'. Interest theory argues that the principal function of human rights is to protect and promote certain essential human interests, while Will theory attempts to establish the validity of human rights based on the unique human capacity for freedom.

10.2.3 Classification of Human Rights:

Human rights can be classified and organized in a number of different ways. At an international level the most common categorization of human rights has been to split them into civil and political rights and economic, social and cultural rights.

Civil and Political Rights are enshrined in Articles 3 to 21 of the 'Universal Declaration of Human Rights' (UDHR) and in the 'International Covenant on Civil and Political Rights (ICCPR). Economic, social and cultural rights are enshrined in articles 22 to 28 of the Universal Declaration of Human Rights (UDHR) and in the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Karel Vasak categorized the human rights into three generations.

- i) First – generation civil and political rights (right to life and political participation).
- ii) Second – generation economic, social and cultural rights (right to subsistence) and
- iii) Third – generation solidarity rights (right to peace, right to clean environment).

Out of these three generations the third generation is the most debated and lacks both legal and political recognition.

10.2.4 Development of Human Rights:

Before we study Universal Declaration of Human Rights we have to know certain documents declaring rights of man such as Magna Carta, Bill of Rights, US Declaration of Independence, French Declaration of the Rights of Man and of the Citizen.

10.2.4.1 The Magna Carta, 1215:-

The Magna Carta was issued on 15 June, 1215 also called Magna Carta Libertatum or the Great Charter of the Liberties of England originally in Latin and translated into vernacular French as early as 1219 and later on it was modified by time to time. The 1215 charter required King John of England to proclaim certain liberties and accept that his will was not arbitrary. For example by explicitly accepting that no ‘freeman’ (non-serf) could be punished except through the law of the land, a right which is still in existence in England.

10.2.4.2 The Bill of Rights, 1689:-

The Bill of Rights or the Bill of Rights 1688 is an Act of the Parliament of England passed on 16 December 1689. This lays down limits on the powers of sovereign and sets out the rights of Parliament and rules for freedom of speech in Parliament, the requirement to regular elections to Parliament and the right to petition the monarch without fear of retribution. It reestablished the liberty of the protestants to have arms for their defence within the

rule of law as Papists were both armed and employed contrary to law.

10.2.4.3 US Declaration of Independence, 1776:-

The Declaration of Independence was a statement adopted by the continental Congress on July 4, 1776 which announced that the 13 American Colonies, then at war with Great Britain regarded themselves as independent states and no longer a part of the British Empire. It contained that all men are created equal that they are endowed by their Creator with certain unalienable Rights, that among these are Liberty and the pursuit of Happiness. This view was notably promoted by Abraham Lincoln, who considered the Declaration to be the foundation of his political philosophy and argued that the Declaration is a statement of principles through which the United States Constitution should be interpreted. It has worked for the rights of marginalized people throughout the world.

10.2.4.4 The Declaration of the Rights of Man and of the Citizen, 1793:-

It is a fundamental document of the French Revolution defining the individual and collective rights of all the estates of the realm as universal. Influenced by the doctrine of 'natural right', the rights of man are held to be universal. It was adopted during the French Revolution in 1789, but after modifications it was adopted in 1793. This declaration is in the spirit of natural law which does not base itself on religious doctrine or authority. According to this, 'Men are born and remain free and equal in rights. And hence, the role of government is to recognize and secure these rights. They are liberty, property, security and resistance to oppression.