



Human Rights: Historical Development, a study of its Principles

Paramjeet singh

Assistant professor
Bharat College of law (BGI)
Parhladpu r- rurki, kkr

Abstract

The nature has bestowed man with two related characteristics-first as an individual and then as a social being. Living in a group organized community is natural to him. To understand human rights, one must look through their history, which will take us back to the day when man first started living in groups. It was natural that many instances might prevailed over what was right; those who held power dominated the weak. In Europe and North America the concept of natural right was secularized, rationalized and democratized. By the end of the 18th century there emerged a concept what was called "the Rights of Man". This concept covered substantially what is now known as civil and political rights. Beginning the mid-nineteenth century, the developments that followed, some time accompanied by violence within the industrial-capital economy of Europe and North America took a new direction.

KEYWORDS: *Democracy, Humanity, Declaration, Established.*

Historical Development

The nature has bestowed man with two related characteristics-first as an individual and then as a social being. Living in a group organised community is natural to him. To understand human rights, one must look through their history, which will take us back to the day when man first started living in groups. It was natural that many instances might prevailed over what was right; those who held power dominated the weak. With the passage of time, these rights are established customs or understandings including the relationship between the ruler and the ruled were brought together in different forms in various parts of the world. They found expression in the concept of natural, law and became the symbol of people's movement against absolute despotism, and the cornerstone of constitutional democracy everywhere. The Magna Carta in England (1215), the American Declaration of Independence (1776), the French Declaration on the Rights of man (1789), the Bolshevik Revolution in Russia (1917), could be cited as important landmarks in the development of the concept of human rights.

Magna Carta yielded certain concessions only to the feudal lords, though did set limitations to arbitrary rule and laid the foundation for the Rule of Law. The American Declaration followed by constitutional amendments contained fairly exhaustive guarantees for the rights of man. While the American and French Declarations set the seal on the basic principles of equality before the law, freedom of thought, human dignity and democratic government, the countries undergoing rapid industrialisation were experiencing the need

more for social justice and economic security. The Bolshevik Revolution in Russia (1917), went a step further. It emphasised that economic and social rights were as important as the civil and political rights. In Europe and North America the concept of natural right was secularised, rationalised and democratised. By the end of the 18th century there emerged a concept what was called "the Rights of Man". This concept covered substantially what is now known as civil and political rights. Beginning the mid-nineteenth century, the developments that followed, some time accompanied by violence within the industrial-capital economy of Europe and North America took a new direction.

While countries in Europe and North America, with rapid industrialisation, were moving towards larger freedoms both political and economic, the people of the rest of the world were more or less experiencing the sufferings and humiliations of colonialism and imperialism. It was natural that interaction and comparison between peoples of the two groups generate wider awareness and demand for human rights among the peoples under colonial rule. For them, a declaration of great historical significance was the clarion call made at the turn of the century in India, by Bal Gangadhar Tilak: "Swaraj is my birth right and I shall have it" As a result of convergence of several historical factors, a concept of human rights was emerged by the middle of the present century. This development found expression in the Charter of the United Nations - which proclaimed "universal respect for, and observance of human rights and fundamental freedom for all without distinctions as to race, sex, language or religion". The Charter made promotion of these rights as one of its basic purposes and obligated member states "to take Joint and separate action in cooperation with the United Nations for the achievement of this purpose". Thus human rights were being universalised and internationalised, UN Charter that laid down principles of a general nature, human rights are not defined or specified in this Charter.

There arises necessity to define human rights and fundamental freedoms so that objectives of the Charter could be pursued and an international system, for promotion and protection of human rights could be instituted. Hence in December 1948, the UN General Assembly proclaimed the Universal Declaration of Human Rights. It define specific rights - civil and political as well as economic, social and cultural with equality and freedom from discrimination as a principal and recurrent them. The Universal Declaration was not conceived as law but as a "common standard of achievement" for all people and all nations.

Theories of Human Rights:

In order to gain the basic understanding of human rights one should look at certain theories of the subject so that the shifting priorities of rights during different phases of history could be observed. The function of theory, however, is to provide an analytical tool by which it is possible to determine the precise subject matter of the concept upon which there might be an agreement.

Theories of rights are as follows:

1) The Theory of Natural Rights:

This is the earliest theory of right and its origin can be traced back to the ancient Greeks. According to this theory, rights belong to man by nature and thus are self-evident truths. They were considered as inborn, absolute, pre-civil and according to some, even 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 possess 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 phenomena. 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 an 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 idea of natural law and natural rights as abstract and ridiculous phenomena. 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 profounders of this theory. According to them, rights are purely utilitarian concepts and thus the rule and regulations are

necessary for the identification and protection of one's rights. Towards this end, every individual was 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 recognises and protects them. Custom, tradition 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 the priority of the well being of the majority as stated by the utilitarian's is not the prime objective of the State. Amongst them Dworkin, Nozic and John Rawls are the leading ones.

They hold the view that the welfare of the majority might lead to detrimental consequences as far as the 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 for a is perhaps the manifestation of this theory.

4. The Legal realist Theory of Rights:

The Legal Realist Theory is of recent origin. It mainly originated in USA 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 the broad-based international sharing of values.

5. The Marxist Theory of Rights:

Rights, according to Marx are simply a bourgeois concept and a product of bourgeois capitalist society primarily designed to maintain and reinforce the predominant position of the ruling class. This theory of rights is very simple and to a certain extent convincing too. He regards the State as a coercive agency to uphold the particular type of social organization and law is a tool of the State that perpetuates and safeguards the interest of the dominant group in the society. Karl Marx firmly believes that rights can exist and flourish only in a classless society where all are equal and no one is an exploiter. Social and economic rights are thus the main concern of this theory. However, the contribution of Marxist thought to the development of international concern on economic, social and cultural rights has been found in the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1966. This theory, however, does not include religion, customs, tradition and morality as integral components of human rights.

6. The Socialist Welfare Theory of Rights:

According to the social welfare theory, rights are created by society, and are aimed at realising social welfare. Conditions which make the individual and society happy are rights, and these should have precedence over customs, usages, traditions and natural rights. This theory looks at rights solely through the angle of social welfare. The theory has the great merit of upholding the principle of social welfare Utilitarians, who supported the theory made a practical approach to rights, and advocate legislation in different fields to uphold rights.

7. The Idealist Theory of Rights:

The idealist or personality theory Rightists says that the human being needs congenial external conditions for the development of his personality. Green, the idealist thinker of England says that rights are powers necessary to the fulfillment of man's vocation as a moral being. Krause, Henrki and wilde said that without rights man cannot become his best self. It is implied that rights arise in a society, and the rights of the individual to be linked with the individual good and the common good of all. The theory links with moral development of man, and looks rights essentially from the ethical point of view. The opportunities on rights are to be enjoyed by the individual and society. Hence they are to be understood in a social context. As the individual wants to develop his personality, others in society also have a similar aim.

According to the idealists like Kant and Green, conditions for the individual's ethical and moral development are created by the State. But, extreme idealists like Hegel subordinate the individual to the State, and expect the individual to surrender himself completely to the State.

8. The Historical Theory of Rights:

As per the Historical theory of Rights, rights are the result of historical evolution. In ancient times, rights were based on customs and usages. But in the modern State, rights are recognised and supported by law. In the course of ages, human beings in society evolved certain usages, traditions and customs for the common good, and this unwritten form became the basis of law, which gave rights to the individuals in actual written form. To the primitive man, custom was unwritten law.

A custom which people go on following generation after generation becomes a customary right, and this provides a basis for law. The theory says that several rights rose as a result of historical evolution. When the State was evolved, human beings must have had certain customs and traditions hardened by time and these provided an evolution. Certain rights are created by law, and they do not have history as the source of their origin. All products of history or custom cannot be regarded as rights or continued as rights. For example, in some countries in ancient times, buying and selling slaves was a custom or right of the slave-dealer. So we can see that long-standing customs can come in the way of rights instead of becoming rights themselves. To sum up, "there is not a single theory which can adequately explain the origin and nature of rights. Each theory is the product of its own time and in conformity with the genius of the people with whom the proponent of the theory were associated. There is some element of truth in all such theories. But there is one eternal truth which cannot be ignored; that individual good and social good go together. Society is an organic unit and welfare of the community is built upon the welfare of the individuals, both go hand in hand". Hence a good theory of rights should take into consideration the most conducive variables essential for the welfare of all the members of a society.

REFERENCES:

1. C.Naseema, Human Rights and Education Conceptual and Pedagogical aspects, Kanishka Publishers, New Delhi: 2002, p.13.
2. Arun Kumar Palai, National Human Rights Commission of India Formation, Functioning and Future Prospects, Atlantic Publishers, New Delhi, p.10.
3. A.C.Kapur, Principles of Political Science, S.Chand Company Pvt. Ltd., New Delhi, 1987, p.210.
4. Jawaharlal Nehru. The Discovery of India, 2nd ed. (New Delhi. Jawaharlal Nehru Memorial Fund, 1992) 88
5. Malkit Singh, "Thinking of Human Rights in Colonial India." Research Journal Social Science. Vol15no.2.,2007, p.84
6. M.Sundara Raj," Awakening of Human Rights",C.J.Nirmal(ed.), Human Rights in India, Historical, Social and Political Perspective. Oxford University press, New Delhi,2006,p.3
7. Human Rights A Source Book- NCERT
8. Vijaya Kumar v.," The working of the National Human Rights Commission, A Perspective." C.J.Nirmal(ed.)Human Rights in India, Historical, Social and Political Perspective. Oxford University press. New Delhi, 2000, p.274.
9. Paramjit S.Jaswal. And Niswtha Jaswal, Human Rights and the Law, (New Delhi: A.P.H. Publishing Corporation, 1996).
10. U.Chandra, Human Rights, 1, Allahabad: Allahabad Law Agency,1999.

Research Through Innovation