



The origin and development of international legal regime protecting human rights: Analysis

Arjoo Tailor¹, Abhijit More²

¹ Assistant Professor of Law, Manipal University, Jaipur, Rajasthan, India

² PhD, Research Scholar, National Law University, Nagpur, Maharashtra, India

Abstract

Human rights are rights inherited by an individual just because he is human regardless of his nationality, location, language, religion, ethnic origin or any other criteria. The contemporary use of the term Human rights as stated in the Universal Declaration of Human Rights of 1948 is of course a revival of the eighteenth-century concept of the "Rights of Man". Many people regard the development of human rights law as one of the greatest accomplishments of the twentieth century. As to the protection of the rights and freedoms of the individual at the international level, work began in the nineteenth century to outlaw slavery and to improve the situation of the sick and wounded in times of war. This research paper will discuss all such attempts made to evolve the concept of Human Rights in the World. The research paper will further analyze the contribution of International institutions and Legal instruments that helped mankind in defining and specifying the concept of Human rights to the world.

Keywords: human rights, universal declaration of human rights, freedom, international regime, international institution, legal instrument

Introduction

The contemporary use of the term Human Rights as stated in the Universal Declaration of Human Rights of 1948 is of course a revival of the eighteenth-century concept of the "Rights of Man" [1]. From this, it may be argued that by virtue of being human, one inheres all those attributes which are inherent in human personality and natural rights being one among those attributes are inherited naturally. Many people regard the development of human rights law as one of the greatest accomplishments of the twentieth century. However, human rights did not begin with law or the United Nations. The rough out of human history have developed systems of justice and propriety that sought the welfare of society.

References to justice, fairness and humanity are common to all world religions: Buddhism, Christianity, and Islam. Until the eighteenth century no society, civilization or culture, in either the Western or non-Western world, had a widely endorsed practice or vision of inalienable human rights.

Documents asserting individual rights, such as the Magna Carta (1215), the English Bill of Rights (1689) the French Declaration on the Rights of Man and Citizen (1789), Bill of Rights (1791) are the written precursors to many of today's human rights instruments. Most of these influential landmarks included women, many minorities and members of certain social, religious, economic and political groups. This reflects the fundamental concept that everyone is entitled to certain rights solely by virtue of their humanity.

The Magna Carta (1215)

In 1215 king John has inherited not only the British throne but also extensive lands in Western France, acquired by his father Henry II through inheritance, war and circumstance, he exploited and abused the traditional sources of revenue. He demanded unprecedented amounts in 'scutage', or money

from his tenants in lieu of providing knights for the king's service. King John gave his barons (and ultimately the world) the Magna Carta, one of the most respected legal documents ever written and a cornerstone of modern constitutions which talks about human rights. The charter, which contains these essential rights: The Church in England can become independent from the Roman Catholic Church; the people can be free from undue tax burdens; a person can have due process of law and inheritance rights without undue burdens. That was the first legal document [2].

English Bill of Rights (1689)

The English Bill of Rights established a constitutional monarchy in Great Britain. A constitutional monarchy is one in which the King or Queen has a largely ceremonial position. It is a form of government in which a monarch acts as head of state but their powers are defined and limited by law. Constitutional monarchies employ a parliamentary system with a Prime Minister as head of the government. The English Bill denounced King James II for abusing his power and the bill was passed as British law in December 1688. The English Bill of Rights clearly established that the monarchy could not rule without the consent of Parliament. The English Bill put in place a constitutional form of government in which the rights and liberties of the individual were protected under English law. The English Bill of Rights had a great influence on the colonies in North America and the Constitution of the United States.

The 1689 English Bill of Rights had a massive influence on the colonies in North America and the Constitution of the United States. The most important Articles of the 1689 English Bill of Rights are as follows:

- A frequently summoned Parliament and free elections
- Members should have freedom of speech in Parliament
- No armies should be raised in peacetime

- No taxes could be levied, without the authority of parliament
- Laws should not be dispensed with or suspended, without the consent of parliament
- No excessive fines should be imposed, nor cruel and unusual punishments inflicted ^[3].

French Declaration of the Rights of Man and Citizen (1798).

The French National Constituent Assembly on 26 August 1789, made Déclaration (des droits de l'homme et du citoyen) also known as (Declaration of the Rights of Man and the Citizen) which determine individual and collective rights at the time of the French Revolution. Some delegates at the Assembly had expressed their admiration for Magna Carta and other constitutional documents, such as the United States Declaration of Independence, but ultimately the Déclaration rejected appeals to ancient charters of liberties, based on the principle that the rights of man were natural, universal and inalienable.

The National Assembly of France granted several rights to men and citizens, the following are the few of many sacred rights given to men and citizens of France.

- Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility.
- Political liberty consists in the power of doing whatever does not injure another.
- The law ought to prohibit only actions hurtful to society.
- Men are eligible to all honours, places, and employments, according to their different abilities, without any other distinction than that created by their virtues and talents.
- No man should be accused, arrested, or held in confinement, except in cases determined by the law, and according to the forms which it has prescribed.
- Every man being presumed innocent till he has been convicted.
- The right to property being inviolable and sacred, no one ought to be deprived of it, except in cases of evident public necessity, legally ascertained, and on condition of a previous just indemnity ^[4].

USA Constitution and Bill of Rights 1791

In the summer of 1787, delegates from the 13 states convened in Philadelphia and drafted a remarkable blueprint for self-government -- the Constitution of the United States. The Constitution was remarkable but deeply flawed. The absence of a "bill of rights" turned out to be an obstacle to the Constitution's ratification by the states. The 10 amendments were proposed in the U.S Constitution also known as the bill of Rights to protect the liberty of the individual ^[5].

- The first amendment of the US Constitution stated that no law should be passed suppressing the freedom of expression.
- The second amendment allowed the people of the USA to keep or bear arms for self-defence and no law could be passed suppressing that right of US Citizens.
- The third amendment prohibits any soldier from taking shelter in any house without the consent of the owner in a time of peace.
- The fourth amendment protects individuals against

unreasonable searches and seizures.

- The Fifth Amendment protects individuals from double jeopardy. No person can compel any individual to become a witness against himself. The same rights are guaranteed under article 20 of the Indian Constitution.
- The sixth amendment ensures a speedy and impartial trial of the individual.
- Under the Seventh Amendment, any facts examined by a jury should not be re-examined by a jury.
- The eighth amendment protects the individual against cruel punishment.
- According to the Ninth Amendment, the rights of the people are not limited to just the rights listed in the Constitution. The rights given in the constitution should be construed in a broader way.
- Tenth Amendment of USA Constitution. This amendment states that any power not specifically given to the federal government by the Constitution belongs to the States and the people ^[6].

League of Nations

During World War I, many suggestions were made from time to time for the creation of an international organization, which could check wars in the future. A Commission of 19 members was set up under the Chairmanship of President Wilson and on 14 February 1919, the tentative draft was presented to the Peace Conference for its consideration. On 28 April 1919, the revised draft was adopted unanimously and the Covenant of the League of Nations was incorporated into the Treaty of Versailles.

The International Bill of Human Rights is the combination of the three most important conventions in the world.

- Universal declaration of human rights (UDHR 1948)
- International Covenant on Economic, social and cultural rights.
- International covenant on civil and political rights.

The Preamble of United Nations Charter (26 June 1945)

The preamble of the United Nations Charter aims to protect the new generation from war and tries to bring equality between different nations and try to protect women from any kind of discrimination. Its ultimate aim is to keep human rights around the world protected.

Universal Declaration of Human Rights (1948)

Universal Declaration of Human Rights (December 10, 1948) is a document drafted by representatives from different legal and cultural backgrounds all around the world. It is proclaimed by United Nations General Assembly on 10th December 1948. It is a common standard of living that all nations should achieve. Its motto is to protect individual's Human Rights. It is a declaration to the world about universally accepted human rights, which every country should follow ^[7].

United Nations have reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Universal Declaration of Human Rights as a common standard of accomplishment for all peoples and all nations to the end that every single and every organ of society, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the

peoples of territories under their jurisdiction^[8].

There are 30 articles in the Universal declaration of human which talks about humans being born free and equal in dignity and right, everyone has right to life and human dignity, everyone has right against slavery and servitude right against torture or cruel treatment, right to recognition, Equality before the law, right of locus standi, fair hearing, right against arbitrary arrest, detention, right of innocence until proved guilty, freedom of movement

Everyone has the right to nationality, right to marry and family, right to own property, freedom of thought, freedom of peaceful assembly and association, right to take part in the government of his country, right to work right to education, etc^[9].

International Covenant on Economic, Social and Cultural Rights (December 16, 1966)^[10]

Free human beings enjoying freedom from fear and want can only be achieved. If conditions are created where everyone may enjoy his economic, social and cultural rights as well as his civil and political rights. This covenant has 31 Articles in it.

Article 1: Provides the right of Self-determination of Political Status to each individual and make him free to pursue Economic, Social and Cultural Development.

Article 2: Protect the individual from any kind of discrimination on the basis of race, colour, language, religion, opinion while pursuing him/her Economic, Social and Cultural goals.

Article 3: Prevent any kind of discrimination on the basis of sex.

Article 4: Any restrictions upon such rights could be imposed by Government only if the restriction promotes the general welfare of society.

Article 5: The covenant must be interpreted in such a way that the rights of individuals are enhanced and not suppressed by authorities.

Article 6: The State parties to the convention should recognize and protect the right to work and earn a livelihood. It should create opportunities for individuals.

Article 7: This article promotes healthy work conditions at the workplace and ensures equal remuneration.

Article 8: Under this article State parties undertake to ensure everyone a right to form a trade union and right to strike. State parties should not impose any restrictions on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others.

Similar kinds of rights are guaranteed under the remaining articles of this convention for the Economic, Social and Cultural development of individuals^[11].

International Covenant on Civil and Political Rights (December 16, 1966)

The covenant has 53 articles requesting State parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial^[12].

International covenant on civil and political rights adopted by the general assembly of United Nations on 19 December 1966. The States Parties to the present Covenant, considering that, in accordance with the principles

proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of equality, freedom, justice and peace in the world. Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings, economic, social, civil and political freedom and freedom from arbitrary use of power by state and basic desire can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights. Considering the duty of States under the Charter of the United Nations to endorse universal admiration for, and observance of, human rights and freedoms. Individual having duties towards other individuals and to the community to which he belongs are under a charge to endeavour for the campaign and compliance of the rights recognized in the present Covenant^[13]

It grants rights like the right of independence, the right to determine their political standing and chase their social and cultural development, to dispose of their natural wealth without prejudice to any obligation arising out of international law and to pass legislation by the state to protect the interest of individual regarding. The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights given in the present Covenant etc^[14]

There are 53 Articles in the Covenant on civil and political rights, which are to protect the civil and political rights of the individual to achieve global justice.

Many other conventions aim to promote dignified life for every human being. The following conventions also guarantee a different set of rights requires for attaining the highest standard of physical and mental health of an individual. They are as follows:

- Convention on the Elimination of all forms of discrimination against women
- Convention on the right of the child
- International covenant on the protection of the right of all migrated workers and members of their family
- International convention on the protection of rights of all migrant workers and members of their family
- Convention on the right of the person with disabilities.
- International Labour Organization and many others

This covenant which the U.N. affirmed in the charter of U.N. and its determination to promote social progress and better standards of life in larger freedom; it also refers to the pledge taken by the member state to achieve, in co-operation with the United Nations the promotion of universal respect for the observance of human rights and fundamental freedom. Through this U.D.H.R. it achieves a standard of common for all peoples and all nation every individual and every organ of the society not only to national but also international security universal and effective recognition and observance, both among the people of member and their jurisdiction^[15]. Although the United Nations had in tacit terms indicated people's determination to reaffirm their faith in fundamental human rights^[16]. The same per se was not sufficient as it lacked clarity in what human rights are as they were undefined. Therefore, for this reason, a categorical statement during all human rights was required at the international level. Consequently, the Universal Declaration of Human Rights

to be enacted. It is regrettably submitted that; mere declaration of human rights also was not sufficient and this came to be realized for the next two decades. In this circumstance, the ICCPR and the ICESCR came to be enacted in the year 1966. The reason for the advent of these covenants was that where there is a right, there is a remedy that is 'Ubi jus ibi remedium,' but UDHR only spelt right not spelt rights, not remedies. It was realized that a right without a remedy is no right in practicality. The beauty of ICCPR & ICESCR was that it bound the states party to it to implement the covenants. These covenants have achieved immense success at the international level qua almost the entire globe is a signatory to it. As many as 167 nations across the globe are to the ICCPR and as many as 7 have signed it but not ratified it ^[17].

Role of United Nations in the Field of Human Rights

United Nations is a medium for creating International law. Declaration, resolution, guideline, multilateral treaties, principal and opinions collectively form the soft law. These are enough for the formation of international law. United Nations evolve a new norm of human rights that states should try to ensure a minimum standard of life. Most state in the world has followed norms given by the international bodies. United Nations has evolved the norms of human rights with universal application. It has spread the spirit of human rights. Most countries interpret their law in a liberal manner to protect the right of the individual. United Nations committee to help in promoting and monitoring the human rights and observe the state to design their constitution according to the international law ^[18].

International Labor Organization (ILO): Purpose to assist in technical training and providing a minimum standard of life.

United Nations Children's Fund (UNICEF): Deliver sanitization, clean water, education, food for the children in need.

United Nations Educational, Scientific, and Cultural Organization (UNESCO) –Intellectual aid in education, science, culture, and communications and promotes development through social, cultural, and economic exchange between the countries,

World Health Organization (WHO): To keep the standard list of the minimum level of life, to promotes and organizes research, and provides technical assistance to countries that are improving their health systems.

UN Security Council: The UN Security Council comprises fifteen member states responsible for making decisions regarding international peace and security. It can make sanctions and decisions for the act, including providing humanitarian aid, grand economic sanctions, and recommending peacekeeping operations. The Security Council has been responsible for establishing international tribunals to prosecute serious violations of humanitarian law ^[21].

Human Right for All: Still a Utopia

Human rights protect the dignity of human beings against intrusion. The human right protects everyone from being subjected to arbitrary exercise of power by the state and its

agencies. The human right granted under the international law, which is not enforceable all time but accepted by many states, which govern the human right through domestic law by adopting the international law. Many treaties, covenant and agencies or committee to protect the liberty and individuality of world but still cases of violation of right throughout the world is common. Every day we hear cases of human rights violation and brutality ^[19].

There are many cases of human right violation around the world which are enlisted by Amnesty international, which are as follows:

On the day of 27th of February 2002, we saw a violation in the Indian city of Godhra, Gujarat of Human Rights. Muslim crowd attacked a train filled with Hindu activists. The event led to a violent spiral of religious revenge and four days later 2 thousand Muslims were killed by Hindus. Their houses were burned; mosques were destroyed. Women were raped, murdered, tortured and mutilated before their families.

In China a massive nationwide crackdown against human rights lawyers, authorities stepped up their controls over the internet, mass media and academia; Televised confessions of critics detained for investigation multiplied; freedom of religion continued to be systematically stifled. The government maintained extensive controls over Tibetan Buddhist monasteries. There are many reports which suggest that Uyghurs Muslims in china are tortured, kept in a detention camp and forced to eat pork and perform many other activities prohibited under their religion ^[20].

In Egypt executions were carried out following grossly unfair trials; Detainees faced torture and other ill-treatment; Women and members of religious minorities were subject to discrimination and inadequately protected against violence; In Israel unlawful killings of Palestinian civilians, including children, and thousands of Palestinians detained who protested against or otherwise opposed Israel's continuing military occupation, holding hundreds in administrative detention; Torture and other ill-treatment remained rife and were committed with impunity; Israeli settlers in the West Bank attacked Palestinians and their property with virtual impunity.

Continued attacks in Kenya carried out by al-Shabaab, the Somali-based armed group, led Kenya to step up its counter-terrorism operations, which resulted in an increase of extrajudicial executions, enforced disappearances and other human rights violations. Human rights organizations reported on violations by security agencies during these operations were increasingly harassed ^[21].

In Pakistan executions resumed; newly established military courts were authorized to try all those accused of terrorism-related offences, including civilians; Religious minorities continued to face discrimination, persecution and targeted attacks, Human rights activists experienced harassment and abuse ^[22].

In Saudi Arabia, the government continued to severely restrict freedoms of expression, association and assembly. The authorities arrested, prosecuted and imprisoned human rights defenders and government critics, often after unfair trials; torture and other ill-treatment of detainees remained common; women faced discrimination in law and practices and were inadequately protected against sexual and other violence; In Syria government forces and non-state armed groups committed war crimes, other violations of international humanitarian law and gross human rights abuses with impunity in the internal armed conflict ^[23].

Conclusion

Human rights are those rights, which should be assigned to a human being irrespective of his race, caste, creed, colour, country, gender, class. These rights are born with humans and these rights are not assignable. All Human rights aim for the development of individuals and the same rights should be given to all society. There are many International covenants, Declarations, Constitutions, Bill of Human Rights that define human rights to a great extent.

Several attempts have been made by the International community to frame certain rights co-extensive with the human being. Documents asserting individual rights, such as the Magna Carta (1215), the English Bill of Rights (1689) the French Declaration on the Rights of Man and Citizen (1789), the US Constitution and Bill of Right (1791), Part III of Indian Constitution are the written precursors to many of today's human rights instruments. Most of these influential landmark's instruments included women, minorities and members of certain social, religious, economic and political groups. This reflects the fundamental concept that everyone is entitled to certain rights solely by virtue of their humanity.

The International Conventions like International Covenant on Economic, Social and Cultural Organization, International covenant on Civil and Political Rights, Convention on the Elimination of all form of Discrimination against Women, Convention on Right of the Person with Disabilities, Convention of Right of Child, and International Labour Organization guaranteed basic right to all individual. However, enforcing the right is still in the hand of State parties. There are many incidences of gross violation of human rights all around the world. The state machinery itself sometimes involves human right violation across the world. The UN is only as effective as its member states allow. Current decision-making powers — especially that given to the five nations (China, France, Russia, United States, and the United Kingdom) with permanent status and veto power in the Security Council — affects the fairness, truth, and lawfulness in decision making.

Reference

1. Starke JG. Introduction to International Law, (London: Butterworths, 1994), p.8, in K.C. Joshi, Impact of International Law on Human Rights in India, Indian Bar Review, 2007:34(1-4):31.
2. Origin of Magna Carta the Magna Carta-Senate, last visited- on November 24, 2017.
3. English Bill of Rights, 1689. <https://www.landofthebrave.info/bill-of-rights-1689.htm>, (Visited on July 2, 2021)
4. The Declaration of the Rights of Man and the Citizen, 1789.
5. The American Constitution and Bill of Rights, 1971.
6. The Bill of Rights: Its History and Significance, http://law2.umkc.edu/faculty/projects/ftrials/conlaw/bill_ofrightsintro.html, (Visited on July 2, 2021)
7. United Nations Official site, <http://www.un.org/en/universal-declaration-human-rights/index.html-last>. (visited on July 2, 2021).
8. United for human right, <http://www.humanrights.com/what-are-human-rights/international-human-rights-law/> (Visited on June 28, 2021)
9. *Ibid.*
10. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27.
11. International Covenant on Economic, Social and Cultural Rights, Official Website of United Nation, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>, (Visited on July 2, 2021).
12. International Covenant on Economic, Social and Cultural Rights, Official Website of United Nations.
13. Article on Equality and Human right, <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social> (visited on April 20, 2021).
14. *Ibid.*
15. H bernner. The Universal Declaration of Human Rights What is it, and why is it important? <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>, (visited on November 23, 2020).
16. Jan Wouters, A comparative study of Eu and US approaches to human rights in external relations, 2014.
17. United Nation of Treaty Collection, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&lang=en, Visited on July 1, 2020)
18. United Nations here and now, edited by Nancy Flower, April 3, 1964. <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-1/united-nations.htm> (visited on 30/9/17).
19. How India's Gujarat riots unfolded, DAWN, 2002. <https://www.dawn.com/news/1265474> (visited on March 23, 2021).
20. China is in midst of worst human rights abuses: Report, January 14, 2021, The economics times, <https://economictimes.indiatimes.com/news/international/world-news/china-is-in-midst-of-worst-human-rights-abuses>, (Visited on July 2, 2021).
21. Amnesty International Report 2015/16 – Kenya, <https://www.refworld.org/docid/56d05b4311.html>, (Visited on July 3, 2021)
22. Amnesty International Report 2015/16 – Pakistan, <https://www.refworld.org/docid/56d05b2715.html>, (Visited on June 28, 2020).
23. Amnesty International reveals the 10 worst attacks on human rights across the world last year, independent, February 24, 2016, <http://www.independent.co.uk/news/world/politics/amnesty-international-reveals-the-10-worst-attacks-on-human-rights-across-the-world-last-year-a6892911.html> (visited on March 21, 2020).