

## Human rights in the 21<sup>st</sup> century: Reinvigorating the concept

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### Abstract

This essay talks about the reinvigorating concept of human rights in the 21<sup>st</sup> century and contains United Nations different treaties regarding the introduction of human rights as an international concept to be followed by the country ratifying the treaties. The essay includes how human rights works in legal process and what can be its outcome outside the realm of law and legal process. Then it talks about the state sovereignty in relation with human rights and includes how human rights can be promoted through law and human rights in 21<sup>st</sup> century. In the end it shows the Indian perspective of human rights how it came to India and what are the laws in India for human rights. The essay fortifies the way that social advancement must be accomplished by speaking to law, legislative issues and profound quality, not by advancing human rights as a panacea that can cure all wrongs.

**Keywords:** human rights; law; 21<sup>st</sup> century; state sovereignty; legal process; humanitarian law; Indian perspective; history

### Introduction

Each individual has pride and worth. One of the manners in which that we perceive the crucial worth of each person is by recognizing and regarding their human rights.

Human rights are the basic rights that are being given to all human beings irrespective of their caste, sex, religion, nationality, language and any other status. Human rights covers right to life & liberty, freedom from slavery and torture, independence of speech and opinion, right to employment and education and other rights. Everybody has these rights without any kind of discrimination to them. Human rights connects people from around the world ensuring similar rights and responsibilities these human rights are the equivalent for all individuals all over the place – people, youthful and old, rich and poor, paying little heed to our experience, where we live, what we think or what we accept that makes them universal rights. Governments have a specific obligation to guarantee that individuals can make the most of their privileges. They are required to build up and keep up laws and administrations that empower individuals to appreciate a real existence in which their privileges are regarded and ensured.

For instance, the privilege to training says that everybody is qualified for decent instruction. This implies governments have a commitment to give great quality training offices and administrations to their kin. Regardless of whether governments really do this, it is commonly acknowledged this is the administration's duty and individuals can reprimand them in the event that they neglect to regard or ensure their essential human rights.

Human rights are a significant piece of how individuals associate with others at all levels in the public eye - in the family, the network, schools, the working environment, in legislative issues and in global relations. It is indispensable in this way that individuals wherever ought to endeavor to comprehend what human rights are. At the point when individuals better comprehend human rights, it is simpler for them to advance equity and the prosperity of society.

They incorporate common and political rights, which allude

to an individual's privileges to participate in the common and political existence of their locale without separation or persecution, they likewise incorporate monetary, social and social rights, which identify with an individual's privileges to succeed and develop and to partake in social and social exercises. This gathering incorporates rights, for example, the privilege to wellbeing, the privilege to training and the privilege to work.

One of the fundamental contrasts between these two gatherings of rights is that, on account of common and political rights, governments must ensure that they, or some other gathering, are not denying individuals access to their privileges, though in connection to monetary, social and social rights, governments must find a way to guarantee rights are being satisfied.

### Historical Perspective

The theory of human rights has played a major role in international law and in global and regional organizations. The concept of human rights is relatively new only since the World War II, the creation of United Nations in 1945 and the introduction of universal declaration of human rights by UN general assembly in 1948, it has passed into common terminology. This substituted the term "natural rights," which in turn fell into direct conflict in the 19th century because the definition of natural law (to which it was closely related) became contentious with the advent of moral rationalism. The phrase 'human rights' also replaced the phrase 'rights of man' which was not understood in the world to include and involve the rights of woman as well. Because human rights are not only for men it's for women's also. Many scholars and students find the origin of human rights in the ancient Greece and Rome, Where it has been closely linked to the ideologies of the Stoics, who held that human behavior should be judged as per the law of nature and brought into unity. The development of human rights as natural rights was facilitated by certain profound changes in society which occurred slowly starting with the collapse of Western capitalism from around the 13th century and

progressing through the Revolution to the Peace of Westphalia (1648).

First, irrespective of their actual nature or rationale, human rights are known to embody all individual and group demands for political power, prosperity, education, and other valued values or skills, the most important of which is equality and their respective elements of shared harmony and mutual forgiveness in the fulfillment of all other these values or capacities. Second, human rights are generally assumed to apply, as distinguished from "non-essential," statements or "goods," to "fundamental" in some weird sense. Where a right is decided to be a human right, it is recognized to be distinctively common or fundamental in nature, in some way universally exercised everywhere by all human beings, including in certain cases even by unborn persons.

There are three generations of human rights given by French jurist Karel Vasak. They are: the primary generation, composed of civil and political rights (*liberté*); the second generation of economic, social, and cultural rights (*égalité*); and therefore the third generation of solidarity or group rights (*fraternité*)<sup>[1]</sup>. The first generation claims that human rights are more negative than positive; it supports abstention from government interference in the search for basic human rights. The second generation, consisting of economic, social or cultural rights, arose mainly from the socialist culture. At long last, the third era, made out of solidarity or gathering rights, while drawing upon and reconceptualizing the requests related with the initial two ages of rights, is best comprehended as a result of both the ascent and the decrease of the state since the mid-twentieth century.

### State Sovereignty and Human Rights

Human rights interference into the historically inviolable domain of national sovereignty destroyed 350 years during which sovereignty was mainly interpreted as a protection against external influence. One of the most significant achievements in post-1945 international relations was the development, declaration and subsequent codification of international human rights law. While the idea of domestic rights had existed for decades, the notion that all people in the world had such rights — that their own government had to protect — was nothing short of radical. One of right related limitation was the international customary law because of which aliens or individuals from other parts of world need to be protected within their jurisdiction, although this defense raise from reverence for the sovereignty of the state of aliens rather than from any greater consideration for the rights of all the persons within the territory of a state. Other boundaries illustrated the sovereign equality of the states or the purported need for international relations.

Many historians have studied about the origin & development of the international human rights principles and what had become the international human rights campaign, and it is not particularly important to the human rights understanding in today's modern world i.e. whether the substantive internationalization started in 1930s, 1940s or 1970s. However formally identifying it as one of the united nations (UN) purposes 'promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion'

was surely a landmark<sup>[2]</sup>. The United Nations charter after the making of it left its implementation or execution on the states themselves but also made it very clear that human rights is not a domestic concept only.

Even though some modern states continue to complain about the infringement of conventional standards of state sovereignty by international human rights norms, sovereignty today no longer allows states to behave in any way they wish to treat individuals within their jurisdiction. Sovereignty in itself is neither good nor bad for human rights. This relies on which states have different sovereign rights and how they exercise them. Today, though by no means good, the international human rights situation is substantially less bad than it has been, in some part because of the manner in which human rights have been integrated into our perception of state sovereignty.

### Human Rights and Law

Human rights council of UN in the year 2006 started a new process called as 'Universal periodic review' of reviewing the human rights situation in every country on a regular basis irrespective of which treaties they had ratified or signed (if any). UPR was adopted by every country without any dispute and all the UN 192 members gave and submitted their reports on domestic human rights conditions and practices in their country and participated in the review on a regular basis.

'Human rights' under this head includes many legal rights and is an extraordinary phrase that give so many different understandings about what rights are. The most important connotation from this gathered can be that the status of human rights as law has to be / needs to be protected as it includes legal obligations as well and also a separation should be maintained between legal obligations and other obligations that can be of political or moral nature. People can understand what human rights are but not international human rights. Law does provide a definition or structural context to this to make people familiar with human rights in today's modern world because concept of human rights is very narrow than international human rights. Law also offers (i) the best proof of the substance of human rights; and (ii) the best proof of the basic universality of human rights obligations currently performed by states. Nonetheless, it is essential to understand the role of human rights as a law if one wishes to explain the other positions that human rights can play as a philosophy, fantasy world or political tactic. International human rights law has had a positive effect on people's lives worldwide and should be motivated to uphold and enforce this law better.

### Protection and Promotion of Human Rights by Law

Today's problem is that human rights have become the victim of their own success. At the same time, this tendency is exacerbated by activists who just want a broad concept of 'rights' as the predominant means of bringing about domestic social and political change, as well as by governments who want to burden human rights with wider territorial projects. Legal reforms can help in the promotion of human rights. By oversight, research, capacity building and activism, it will aim to improve operational legal structures and transparency processes to reinforce the protection of human rights in the field of law enforcement,

<sup>1</sup> <https://www.britannica.com/topic/human-rights/Defining-human-rights>

<sup>2</sup> Article 1.3 Charter of the United Nations 1945, 1 UNTS XVI.

in particular with respect to the denial of expression, the use of force and the avoidance of violence and ill-treatment. The UN's solid accentuation on human rights made it unique in relation to past universal associations. UN part nations accepted that the security of human rights would help guarantee opportunity, equity and harmony for all later on.

### **Human Rights outside the Realm of Legal Process**

One cannot see or imagine human rights beyond or outside the realm of law and legal process. Every person in the world have the rights to live with dignity and respect. Through the enjoyment of all human rights, such dignity and respect are afforded to people and safeguarded by the legal system. The backbone of the liberty to measure in dignity is that the international human rights framework, alongside international humanitarian law, international legal code and international refugee law<sup>[3]</sup>. The legal system is a tool for upholding and safeguarding the existing regulatory framework. This establishes a mechanism whereby the exercise of power is subject to negotiated laws, meaning that all human rights are protected. There are two aspects of the same concept, the law and order and human rights, the freedom to live with equality. Therefore there is an indivisible and essential connection between the rule of law and human rights. That inherent connection has been fully recognized by Member States since the adoption of the Universal Declaration of Human Rights, which states that it is important that 'if man is not forced to return to revolt against tyranny and oppression in the last resort, human rights should be secured by the law.

Human rights can have an impact on the use of force in two primary ways. First, extreme or systematic acts of violence can be used to excuse the use of force by one state or the co-alliance of states against another. Such a rationale would either alter or serve an exception to threat or use of force prohibition. Furthermore, the combined implementation of international human rights law and international humanitarian law (IHL) in conflicts around the world that change one or the other body of law. (hannum, 2016)

The implementation of a human rights-based approach to international collaboration and assistance programs is a key element in 'popularization' the protection of human rights. Instruction on the implementation of a human rights-based approach can be contained in the Declaration of Shared Understanding on the Strategy to Development Cooperation of the United Nations Organizations. In general, a human rights-based approach should include an emphasis in programming on promoting equality and non-discrimination, ensuring vulnerable community involvement and inclusion, and increasing state responsibility for its human rights responsibilities.

### **Human Rights in Changing Global Order**

Advances globally, involving failed states, economic reform, privatization, and trade liberalization around borders — elements of what has become known as globalism — have contributed to the rise of strong non-state actors who sometimes have wealth greater than those of several nations. The law relation between globalization and human rights can be examined from the viewpoint of market regulation as well as human rights law, first analyzing whether global economic law supports human rights concerns adequately or

takes them into consideration, instead assessing the degree to which human rights law taking into account globalization and economic interests.

### **Human rights in the 21<sup>st</sup> century**

The historical backdrop of the substance of human rights reflects developing and clashing view of which esteems or abilities remain, at various occasions and through contrasting focal points, most needing mindful consideration and, at the same time, mankind's repetitive requests for progression and strength. Such elements are reflected, for instance, in a rising agreement that human rights reach out to the private just as to the open segment—i.e., that non-state just as state entertainers must record for their infringement of human rights. Whatever the present mentalities and arrangements of governments, the truth of mainstream requests for human rights, including both more noteworthy financial equity and more prominent political opportunity, is past discussion. A developing and enlarging worry for the advancement and assurance of human rights on all fronts, rushed by the perfect of self-assurance in a postcolonial period, is currently obviously woven into the texture of contemporary world undertakings. Considerably liable for this dynamic improvement has been crafted by the UN, its associated offices, and such territorial associations as the Council of Europe, the OAS, and the AU. Adding to this advancement, especially since the 1970s and '80s, have been six other notable components:

1. the rise of patriotism and rising desires in the creating scene following the post-World War II destroying of provincial domains,
2. the open support of human rights as a key part of national international strategies, made at first real by the case of U.S. President Jimmy Carter,
3. the rise and spread of common society on a transnational premise, principally as dissident nongovernmental human rights associations,
4. an overall bounty of educating and research dedicated to the investigation of human rights in both formal and casual settings,
5. the expansion of huge UN gatherings in regions, for example, kids' privileges, populace, social advancement, ladies' privileges, human settlements, and nourishment creation and conveyance, and
6. a women's activist scholarly and political test with respect to the privileges of ladies worldwide as well as what women's activists consider to be the paternalistic fantasies and mythic structures that indicate to characterize accommodating administration for the most part.

To put it plainly, the systems for the requirement of human rights are still in their earliest stages, a circumstance due in no little measure to the post-Cold War predominance of neoliberalism in world issues, which is firmly impervious to state and market guideline of the economy.

### **Human Rights Concept in India**

Before the selection of the Indian Constitution the Indian practice in regard of connection of International law to inner law or metropolitan Law was like the British practice. After the selection and coming into power of Indian Constitution everything relied on the arrangements of the Constitution. In this manner, so as to know the situation of connection

<sup>3</sup> <https://www.un.org/ruleoflaw/rule-of-law-and-human-rights/>

between International Law what's more, internal law in India, it is important to see the significant arrangements of the Constitution. This is essential since India approved the two pledges on Human Rights-(I) International Covenant on Civil and Political Rights (1966) and (ii) Universal Covenant on Economic, Social and Cultural Rights (1966) on March 27, 1979. Subsequently globally India has given it's agree to be found by the arrangements of the said two International Treaties.

What is extremely material is whether Indian Constitution was perceived and given impact, to human rights? The appropriate response isn't just in confirmed and positive yet it might be included that Indian Constitution is attributed with not just offering impact to human rights however has likewise made them enforceable some time before the reception of Universal Convention for the Protection of Human Rights and Fundamental Opportunities (1950) which came into power on September 3, 1953. thus despite the fact that there is no express notice of the term „human rights“ in the Constitution, the Constitution of India has fused human rights in a major path as Fundamental Rights and Directive Principles of State Policy. While the previous fuses common and political rights, the last fuses the financial, social and social rights. The Indian Constitution bears the effect of the Universal Declaration of Human Rights and this has been perceived by the Supreme Court of India. While alluding to the Fundamental Rights contained in Part III of the Constitution, Sikri, C.J., of the Supreme Court. In *Kesavananda Bharti v. Territory of Kerala* watched: "I can't hold these arrangements show that rights are not common or natural rights. Truly, India was involved with the Universal Declaration of Rights.....and that Declaration portrays some essential rights as unavoidable." The Supreme Court has additionally perceived the interpretative estimation of the inclusive Declaration of Human Rights.<sup>10</sup> The Universal Declaration of Human Rights doesn't characterize the term "human rights". It alludes them as "the equivalent and alienable privileges of all individuals from the human family.

The framers of the Indian Constitution liked the concept of human rights and guaranteed most of human rights within the Universal Declaration. The Universal Declaration of Human Rights contained civil and political, economic, social and cultural rights. While Civil and Political rights have been defined in Part III of Indian Constitution, economic, social and cultural rights have been defined in Part IV of the Constitution.

What's more, instruction about human rights is similarly as significant as having laws to secure individuals. Long haul progress can extremely possibly be made when individuals know about what human rights are and what guidelines exist. An individual's human rights can't be removed. In its last Article, the Universal Declaration of Human Rights expresses that no State, gathering or individual '[has] any privilege to take part in any action or to play out any demonstration focused on the obliteration of any of the rights and opportunities put forward in this'.

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