



A study of the origin and new dimensions of human rights

Krishnokoli Basu

Assistant Professor, Department of Law, Kolkata Police Law Institute, Kolkata, West Bengal, India

Abstract

The idea of human rights has its origin in the olden ideas of innate dignity possessed by human beings. The concept developed through numerous international instruments including the Magna Carta. A concrete document on human rights was formulated following World War II when the Universal Declaration of Human Rights (UDHR) was adopted by the United Nations in 1948. The notion of human rights is ingrained in the principles of individual rights and societal responsibilities. These concepts were present in the ancient cultures of Greece, China, Rome and even India. New dimensions of human rights encompass emerging aspects and categories, such as digital rights and the entitlement of every individual to a healthy environment. The current paper includes detailed study and understanding of the origin and growth of the idea of human rights across the entire globe. The author has made an effort to explain the various aspects of the subject and to that end, after introducing the subject and its concept, the author has explained the international legal doctrines and instruments on human rights. The generations of human rights have been included in this text as well. The development of human rights in India has then been thoroughly examined. The paper focuses on the growth and evolution of human rights in the world and also particularly in India.

Keywords: Magna Carta, UDHR, innate, rights, duties, generations

Introduction

Human rights are an ensemble of rights that uphold each individual's worth and dignity. The fall of natural rights at the end of the 18th century left a vacuum that was filled by other ideas like socialism and utilitarianism ^[1]. The basic worth of an individual can be acknowledged only when their human rights are protected. Some fundamental and basic rights which are recognised to be essential for every human being are right to life, right to health and education, right to an adequate standard of living, freedom of speech, freedom of religion etc. Irrespective of religion, sex, caste, creed, race and background, these rights must be made available to all at all places round the globe.

However, human rights link all individuals through a set of mutual rights and duties. One can enjoy his own human rights only when they are respected by others. Every individual has a certain set of responsibilities towards the community as well.

On the other hand, government of a particular state has to make sure that the citizens are not deprived of their basic human rights. They have to formulate laws and regulations to maintain peaceful environment and to grant and provide remedies equally.

The concept of "natural rights" is the essential component that makes the human rights idea. Natural law is the root of the "natural rights" idea. Yet, the expression "human rights" was introduced only after World War II. The term "human rights" was used for the first time in the United Nations Charter, 1945 ^[2] which was drafted after the end of the Second World War.

The UN Charter's Preamble asserts that the organization's primary purpose is "to reaffirm faith in fundamental human rights," and Article 1 adds that the "purposes" of the UN shall include "to achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

Durga Das Basu has defined human rights as those minimal rights which every individual must have against the state or other public authority by virtue of his being a member of the human family, regardless of other factors ^[3].

Durga Das Basu's definition of human rights is based upon the concept of human rights as contained in the Charter.

Jack Donnelly has said that "human rights are held by all human beings, irrespective of any rights or duties individuals may (or may not) have as citizens, members of families, staff members, or elements of any association or organization, whether government-funded or private. They are universal rights ^[4]."

Joel Feinberg has claimed that human rights are those ethical liberties which are to be enjoyed equitably by mankind absolutely and unalterably ^[5].

Indian law defines "human rights" in section 2(d) of The Protection of Human Rights Act, 1993. According to section 2(d) of the Act, human rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and are upheld by Indian Courts.

Concept

To understand the concept of human rights, it is imperative to study the notion of natural rights. The foundation of natural rights rests on the principles of reason, justice, immutability and universality, which are lacking in man-made laws ^[6].

Since these rights are innate to all people, human rights are also known as natural rights. They are to be enjoyed equally and universally by all. It is believed that all individuals ought to enjoy these rights. The continued development and fulfilment of human essence and dignity depend on them. They are not restricted to a single group; they apply to the entire planet ^[7].

The expression "human rights" is a new way of expressing the classic phrase "the rights of man".

Just before the UN Charter was adopted, the then President of the United States of America, Franklin D. Roosevelt used the term 'human rights'. In his message to the US Congress in 1941 he urged for a strong foundation of four essential freedoms that must be made available to all human beings. The four freedoms that he envisaged were freedom of speech, freedom of religion, freedom from want and freedom from fear. Even unity on the concept of human rights in the West is overrated^[8].

The Atlantic Charter that was signed between Franklin D. Roosevelt and Sir Winston Churchill in August 1941, has references of international human rights obligations, while the Allied United Nations Declaration of 1942 made the scope of these human rights commitments even wider^[9].

Following the Atlantic Charter of 1941 and the Allied United Nations Declarations of 1942, it was decided that global recognition of human rights must be introduced into the UN Charter of 1945. Thus after the Second World War, the idea of human rights became conceptualised. The brutality of the two World Wars led to the acceptance of human rights on a global scale.

The first effective step towards adopting human rights was taken by the General Assembly of the United Nations in 1948 when the Universal Declaration of Human Rights (UDHR) was framed. This was an immediate reaction to the massacres of the two world wars.

The UDHR did not define human rights but contained the broad principles of human rights which were further classified as civil, political, social, economic and cultural rights. But one lacuna of the UDHR was its non-binding nature. In order to find a remedy to this, on 16th of December 1966, the UN General Assembly adopted two covenants, namely, The International Covenant on Civil and Political Rights (1966) and The International Covenant on Economic, Social and Cultural Rights (1966).

International Human Rights Law

The historical origin of the concepts of human rights is often linked with the idea of natural rights under classical natural law^[10]. The concept of natural rights was recognised by the Greek and Roman philosophers. Plato (427–348 BC) espoused a universal model of ethical conduct.

Aristotle (384–322BC) said in his book 'Politics' that the concepts of virtue, justice and rights depend on various constitutions and circumstances. The Magna Carta of 1215, i.e. the Great Charter of the Liberties of England contained provisions that protected against the arbitrariness of kings. Additionally, it supported rights to travel, jury trials, property protection, and compliance of laws.

Governments are required by international human rights legislation to take specific actions or refrain from taking specific actions in order to uphold and defend the fundamental freedoms and human rights of individuals or groups. The development of a comprehensive body of human rights law—a globally recognized and universal rule that all countries may abide by and to which all people can aspire—is one of the United Nations' greatest accomplishments. A wide spectrum of globally recognized rights, such as civil, cultural, economic, political, and social rights, have been established by the UN. Additionally, it has put in place systems to support governments in fulfilling their obligations and to advance and defend these rights.

Human rights law grew and evolved dramatically after the Second World War. Some principles of Human Rights were

included in the Covenant of the League of Nations when the First World War ended in 1919^[11].

There were some significant human rights clauses in the League of Nations Covenant. Labor rights were endorsed under Article 23 of the League of Nations Covenant. It stated that the League members "will endeavour to secure and maintain fair and humane conditions of labour for men, women, and children, both in their own countries and in all countries to which their commercial and industrial relations extend" and "undertake to secure just treatment of the native inhabitants of territories under their control."

Sadly the attempts of the League were unsuccessful. Consequently the UN Charter emerged. Its Preamble stated that they were resolved "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small," as well as "to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind."

According to Article 1(3) of the UN Charter, one purpose of the UN Charter would be to "achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."

Article 55 of the UN Charter provides, "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

In Article 56 of the UN Charter, the member states of the UN vowed "to take joint and separate action in co-operation with the Organisation for the achievement of the purpose stated in Article 55."

As an international human rights measure, the UN Charter also provided for building an Economic and Social Council (ECOSOC) which would make "recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all."

The International Trusteeship System was set up under Article 76 of the UN Charter. It was made for administering Trust Territories. The ECOSOC constituted a Commission on Human Rights in 1976. It derived its power from the UN Charter itself. The aim of the Commission was to formulate a framework of an international bill of rights which would set forth the human rights already contained in the Charter^[12].

A Drafting Committee appointed by the Commission drafted the international bill of rights^[13].

Eleanor Roosevelt, the chairperson of the Human Rights Commission, indicated, "We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind," on December 10, 1948, the day the Universal Declaration of Human Rights was adopted^[14]. It's likely that this Declaration could function as the global Magna Carta for all men. We hope that the General Assembly's declaration will be analogous to the French Declaration of the Rights of Citizens' proclamation in 1789, the US people's ratification of the Bill of Rights, and similar declarations expressed at various points in time in different countries.

Human rights must be protected by the rule of law^[15]. The

Universal Declaration of Human Rights (UDHR) was the actual beginning of universally acknowledging and protecting human rights by the principle of rule of law. Many international treaty laws started to develop after the adoption of the UDHR in 1948.

The UDHR was a soft law. It was non-binding in nature. This paved the way towards adoption of two binding covenants for the protection of the different types human rights which were already provided for in the UDHR. The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted in 1966. Both the ICESCR and the ICCPR became legally binding after they entered into force in 1976. Thereby the primary values to be admired by every human being were recognised by the covenants.

In line with these aforementioned covenants, a number of international declarations and treaties were endorsed by the UN for the protection of rights of children, women, minorities, indigenous people, stateless persons, diplomatic agents etc.

According to the World Conference on Human Rights (1993), "States, regardless of their political, economic, and cultural systems, have a duty to promote and protect all human rights and fundamental freedoms, while keeping in mind the value of national and local particularities and various historical, cultural, and religious backgrounds [16]."

Generation of Human Rights

Civil and Political Rights come under First Generation of Human Rights and are covered under Articles 3 to 21 of the UDHR (1948) and The International Covenant on Civil and Political Rights (1966). These include right to life, freedom of speech, equality before the law, voting rights, property rights etc.

The economic, social, and cultural components of the Second Generation of Human Rights earned momentum following World War II. They are right to just and favourable conditions of work, food, social security, housing, healthcare etc. These rights are provided under Articles 22 to 28 of the UDHR (1948) and in the International Covenant on Economic, Social and Cultural Rights (1966).

Many progressive declarations, including the Rio Declaration on Environment and Development (1992) and the Stockholm Declaration of the United Nations Conference on Human Environment (1972), provided the bedrock for the Third Generation of Human Rights. These rights, in broadly, cover the rights to sustainability, intergenerational equity, natural resources, a healthy environment, self-determination, and participation in cultural heritage.

Currently the Fourth Generation of Human Rights is developing to recognise rights relating to cyberspace and information and communications technologies. These rights are right to equal access to computer and digital technology, right to digital security, right to digital self-determination and right to access one's own digital data.

National Human Rights Law (India)

a. Ancient and Medieval Period

It is not true that the idea of human rights has been derived solely from Western Civilisation. It can be traced back to ancient civilisations and religious traditions. The elements

of human rights were present in Indian tradition since the ancient period. It was believed that the Almighty manifested itself not only in the form of human beings but also in the forms of animals, plants, rocks and mountains.

The Yajurveda [17] established that harmony must be maintained between man and nature. Paul Younger [18] noted that, "the Hindu also observes the behaviour of the planets and animals around him, and carefully adjusts his life to suit the crops of the cattle from which he gains his livelihood."

The Atharva Veda suggested that the Vedic Scholars preached unity among own people and strangers [19]. Apart from universal brotherhood and peace, Hinduism taught human solidarity, secularism and religious tolerance. Hinduism in Ancient India focused attention on realising four ends of life, i.e. Moksha (freedom), Karma (sensuous enjoyment), Artha (prosperity), and Dharma (suitable behavior).

The co-relation between rights and duties was found in traditional Indian culture. There was an elaborate code of conduct and a set of duties for every individual. The duties were general, special and emergent duties. Jati Dharma, Desa Dharma, Kula Dharma, Yuga Dharma, and other particular obligations were among them.

Very popular Dharma or fundamental duties of that period were truthfulness (satya) and non-violence (ahimsa).

If one studies the ancient Indian social structure, it will be found that Dharma tied everyone together and there was no differentiation between human beings. The Rajdharma assigned special powers to the ruler for effective administration of kingdom [20].

b. British Period

The British ruled India for about two centuries and brought many significant changes in Indian legal system. During this time a deep impact of international law on India was felt as well. The introduction of the notion of rule of law aided in the growth of international law in India. In addition with rule of law, the ideas of right, liberties, justice and protection of lives of people were acknowledged during the British regime in India. In the Hamlin Lectures (1960), M.C. Setalvad, the then Attorney General of India, highlighted the influence of British common law on criminal law, civil law and constitutional law in India. But it is also true that the British system of law left an equally intense impact of international law in India [21].

A number of judicial decisions of the pre-independence period illustrate how international law became a part of Indian legal system. The Madras High Court in *Annakumari Pillay v. Muthupayal* [22] relied on international law and relevant precedents of British law. It was held that for an Indian Ruler to exploit fisheries in inland water, the basis of immemorial use must be kept in mind.

c. Post Independence Period

1. The Constitution of India

Shortly after India's independence, the Indian Constitution was ratified as "basic law of the country" [23]. The Constituent Assembly adopted the Objective Resolution on 22nd January, 1947 and it led path for the adoption of the Indian Constitution. The Objective Resolution may be described as "something more than a resolution. It is a proclamation, an unwavering determination, a commitment, an endeavor, and, for all of us, a commitment. The Indian Constitution's Preamble outlines its goals and essential

characteristics and states the objectives ^[24]. After the 42nd Amendment, 1976, the Preamble specifies India to be a Sovereign Socialist Secular Democratic Republic. The Preamble of the Indian Constitution also ensures justice, liberty, equality and fraternity to all its citizens.

In the case of *P.A. Inamdar v. State of Maharashtra* ^[25], the Supreme Court held that in order to achieve the objectives contained in the Preamble, the Indian polity must be educated properly and with excellence.

Part III (Articles 12 to 35) of the Constitution of India guarantees fundamental rights while Directive Principles of State Policy are provided in Part IV (articles 36 to 51).

The fundamental rights provide for freedom, equality and liberty. Right to equality, right against exploitation, cultural and educational rights, right to particular freedom and right to constitutional remedies are covered under Part III.

The Directive Principles of State Policy as contained in Part IV impose duty upon the State to follow them for smooth governance of the country. However, Article 37 provides that the Directive Principles cannot be enforced in any Court of Law.

The Preamble when read with articles 14, 19 and 21, it can be understood that individual rights are superior to social rights ^[26].

Part IVA containing Article 51A was inserted by the 42nd Amendment, 1976 and provides eleven fundamental duties to be followed by every Indian citizen.

The Fundamental duties include abiding the Constitution and to respect its ideals and institutions; cherishing and following the noble ideals which inspired our national freedom struggle; upholding and protecting sovereignty, unity and integrity of the nation; defending the country and rendering national service; promoting spirits of harmony and common brotherhood among all; preserving our composite culture; protecting and improving natural environment; developing a sense of scientific temper and humanism; safeguarding public property and renouncing violence; moving towards excellence in spheres of activity; a parent or guardian has to provide education to his or her ward or child, who is between the ages of six and fourteen ^[27].

But these Fundamental Duties are unenforceable in Courts of Law as they are directory in nature. They cast no public duties ^[28].

However, the Fundamental Duties are useful for interpreting ambiguous statutes ^[29].

2. Human Rights Commissions of India

The Lok Sabha passed a Bill on Human Rights on 18th December 1993 and The Protection of Human Rights Act, 1993 ^[30] was enacted. Consequently the National and State Human Rights Commissions were constituted for protection of life, equality, liberty and dignity of every individual. Thus it was aimed to respect and protect the human rights which are guaranteed by The Constitution of India and the International Covenants ^[31].

A National Human Rights Commission (NHRC) is required to be established by the Act of 1993, and its chairperson must be a former Chief Justice of India. Other members shall include former Supreme Court and High Court Judges, persons having special knowledge of human rights and Chairpersons of National Commissions of Minorities, Scheduled Castes, Scheduled Tribes and Women serving as ex officio members.

The headquarters of the Commission shall be located at Delhi and it shall have offices at other places in India ^[32].

The NHRC shall work proactively to prevent and provide solutions for any sort of human rights violations and shall spread awareness in the society through all available means. In *Peoples' Rights v. Union of India* ^[33], the Supreme Court directed the State to go by the report of the NHRC and follow its directions in the matter of paying compensation to the kins of the victims of occupational disease.

Sections 21 to 29 of the Act provides for setting up of State Human Rights Commissions (SHRC) ^[34] at state levels to protect and uphold human rights. The powers of the SHRCs shall be similar to the NHRC and they shall discharge their functions within the jurisdiction of their respective states.

Human Rights Courts are set up in every District under Sections 30 and 31 of the Act for speedy trial and disposal of offences arising out of human rights violations.

In *Dilip K. Basu v. State of West Bengal* ^[35], the Supreme Court said that all states shall take necessary measures for establishing Human Rights Courts according to Section 30 of the Protection of Human Rights Act, 1993.

References

1. Linda Hajjar Leib, *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives* Brill, 2011, 41.
2. See, Jeffrey Kahn, "Protection and Empire: The Martens Clause, State Sovereignty, and Individual Rights," *Virginia Journal of International Law*:2016:56(1):1-49.
3. Durga Das Basu, *Human Rights in Constitutional Law* (LexisNexis Butterworths, New Delhi, 2008, 8.
4. Jack Donnelly, *International Human Rights*, op. cit., 18.
5. Joel Feinberg, *Social Philosophy* Prentice Hall, 197, 85.
6. Durga Das Basu, *Tagore Law Lectures on Limited Government and Judicial Review* (S. C. Sarkar, Kolkata, 1972).
7. For example, the recent debate over the recognition of the equal right of LGBT, see, Abadir M. Ibrahim, "LGBT Rights in Africa and the Discursive Role of International Human Rights Law," *African Human Rights Law Journal*, 2015:15:263-281.
8. Richard Falk, "Human Rights", *Foreign Policy*, 2004.
9. See, M. Glen Johnson and Janusz Symonides, *The Universal Declaration of Human Rights: A History of Its Creation and Implementation 1948-1998* (UNESCO Publishing, 1998,17.
10. See, M. Mutua, "Standard Setting in Human Rights: Critique and Prognosis", 29, *Human Rights Quarterly* (2007), pp. 547-630; M.R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (University of California Press, Berkeley, 2004).
11. See, M.R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (University of California Press, Berkeley, 2004
12. See, T. Buergenthal, "The Normative and Institutional Evolution of International Human Rights," *Human Rights Quarterly*,1997:19(4):703-723.
13. International bill of rights consists of the UDHR, the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic Social and Cultural Rights (ICESCR). See generally, J. Morsink, *The Universal Declaration of Human Rights*:

- Origin, Drafting, and Intent (Philadelphia: University of Pennsylvania Press, 1999); M.G. Johnson and J. Symonides, *The Univesal Declaration of Human Rights: A History of Its Creation and Implementation, 1948-1998* (UNESCO Publishing, Paris, 1998).
14. Universal Declaration of Human Rights G.A. res. 217A (III), UN Doc. A/810, p.71 (1948).
 15. *Ibid.*, Preamble, Para. 3.
 16. See, Vienna Declaration and Programme of Action, as adopted by the World Conference on Human Rights on 25 June 1993, UN Doc. A/Conf.157/23 9, 1993, 5.
 17. See, Abinash Chandra Bose, *Hymns From the Vedas* (Asia Publishing House, Bombay, 1966, 216-217.
 18. Paul Younger, *Introduction to Indian Religious Thought* (Westminster Press, London, 1972, 35-36.
 19. See, Abinash Chandra Bose, *Hymns From the Vedas*, *op.cit.*, 54.
 20. Rama Jois, *Legal and Constitutional History of India* (Universal Law Publishing, New Delhi, 1984:I.
 21. See, M.C. Seatalvad, *The Common Law India* London, 1961.
 22. ILR Mad, 1904:27:55.
 23. See, *Oxford Advanced Learner's Dictionary* Oxford University Press, 2010.
 24. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC,1973:1461:4 SCC 225.
 25. AIR 2005 SC, 2005:3226:6 SCC 537.
 26. *Ashok Kumar Thakur v. Union of India*, AIR 2008 SC, 2008:6(1) SCC 1.
 27. Inserted by the Constitution (Eighty-sixth Amendment) Act, 2002, Section 4 9w.e.f. 01.04.2010).
 28. See, *Surya Narain v. Union of India*, AIR 1982, 1.
 29. *Mohan v. Union of India* (1992) Supp 1 SCC 594.
 30. Received the assent of the President on January 8, 1994 and published in the Gazette of India, Extra. Part II, Section 1, dated 10th January 1994:10:1-16.
 31. "International Covenants", according to Section 2(d) of the Protection of Human Rights Act, 1993, means the International Covenant n Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on December 16, 1966. See, *People's Union for Civil Liberties v. Union of Indi*, JT 2005 (1) SC 283: (2005) 2 SCC 436.
 32. Section 3 of the Protection of Human Rights Act, 1993.
 33. 2016 (5) SCALE 46.
 34. At present there are 23 State Human Rights Commissions working in different states in India on. They are: Assam, Andhra Pradesh, Bihar, Chattisgarh, Gujarat, Goa, Himachal Pradesh, Jammu and Kashmir, Kerala, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Odisha, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Jharkhand, Sikkim, Uttarakhand and Haryana, 2015.
 35. AIR 2015 SC 2887: (2015) 8 SCC 744