

Human Rights Nature, Concept, Origin and Development

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Table of Contents

Meaning and nature of Human Rights	4
The Philosophical or theoretical approach:.....	5
a) The Natural Rights Theory:.....	6
b). The legal right Theory:.....	7
c). The Historical theory of Rights:	8
d). The social welfare theory of rights:.....	9
The Idealistic theory of Rights:	10
Pragmatic Approach:	11
CONCEPT OF HUMAN RIGHTS:	12
Western view of Human Rights:	13
Socialist view of Human Right:	14
RELIGIOUS VIEW:.....	15
Origin and Development	16
Universal Declaration of Human Rights	19
PREAMBLE.....	20
Universal Declaration of Human Rights:	21
Article 1.	21
Article 2.....	21
Article 3.....	21
Article 4.....	21
Article 5.....	21
Article 6.....	21
Article 7.....	21
Article 8.....	21
Article 9.....	21
Article 10.....	21
Article 11	22
Article 12	22
Article 13.....	22
Article 14	22
Article 15	22
Article 16	22
Article 17	22
Article 18	23
Article 19	23
Article 20.....	23
Article 21.....	23
Article 22	23
Article 23	23
Article 24	23
Article 25	24
Article 26	24
Article 27	24
Article 28	24
Article 29	24
Article 30	25
Conclusion	28

Notes 29

Meaning and nature of Human Rights

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights, which are commonly known as Human Rights. According to the New International Webster's Comprehensive Dictionary of the English Language, literally the word "right" means anything done in accordance with or conformable to truth or fact, correct, true, accurate, not mistaken, conformable to a standard of propriety, fit , suitable and the word "human" means pertaining to characterising man or mankind¹. However, Human rights being a generic term embrace civil rights, civil liberties, social, economic and cultural rights. It is therefore difficult to give a precise definition of the term Human Rights. As such, it can be said that the rights that all people have by virtue of human existence are human rights. Since these rights belonged to them because of their very existence, they become operative with their birth. Human Rights being the birth right are therefore, inherent in all the individuals, Irrespective of their caste, creed, religion, sex, nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare, they are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings; Human Rights are also sometimes referred to fundamental rights, basic rights inherent rights, natural rights and birth rights².

As for as the nature of Human Rights is concerned, two main approaches were adopted to explain the nature of Human Rights from time to time. The approaches are philosophical approach and pragmatic approach.

The Philosophical or theoretical approach:

The Philosophical or theoretical approach has been categorized in five more theories to explain the rights of man. These are

a) The Natural Rights Theory:

According to this theory the Human Rights are inherent in the very nature of human being. Human person posses these rights because of the very fact that it is a person, a whole, a master, a master of itself and of its acts by natural law³. Therefore, the growth of concept of the ‘Rights of Man’ has been closely associated with the traditional natural law theories, as a matter of fact the notion of individual rights has never been projected as a special feature in these theories, and Law as such implies both duties and rights⁴. As such, duties and rights are co-related with each other. D. D. Raphael has rightly observed that,

“The rights are rights against other people, and the duties are duties to other people. Thus a system of natural law, a system of duties which all men have to others, is at the same time a system of rights which all men have against others⁵ .

b). The legal right Theory:

The natural rights theory has been criticized by many scholars, and in turn advocates in favour of the legal rights theory. According to this theory, the rights are the creation of state. As such, they are neither absolute nor inherent in the nature of man. All rights such as right to life, liberty or property are artificially created by the law of the land⁶. These fundamental rights are the right of self preservation, which can be protected by state only in better manner than by any other means⁷. This theory extended that these rights can be recognized by the state only for its enforcement, and if state can not recognize it, it can not be enforced⁸.

c). The Historical theory of Rights:

The historical theory maintains that the rights are the creation of historical process. A long standing custom in the course of time concretize in the specific form of right. Ritchie's comments in this context, that, "those rights which people think they ought to have are just those rights which they have been accustomed to have , or which they have a 'tradition' (whatever true or false) of having once possessed. Custom is primitive law⁹ .

d). The social welfare theory of rights:

This theory is also known as the Social Expediency theory. The advocates of this theory are of the opinion that law, custom and natural rights, all are conditioned by social expediency¹⁰. The social welfare theory has played important role in the development of number of human rights. As such, large number of social rights and economic rights has been incorporated in the Universal Declaration of Human Rights¹¹.

The Idealistic theory of Rights:

The Idealistic theory of Rights is also known as personality theory of Rights. This theory insists on the inner developments of man, on the development of his full potentiality. Hence, it treats rights of personality as a supreme and absolute right. According to this theory all other rights have been denied from right of personality and are conditioned by it¹².

Pragmatic Approach:

Besides, philosophical and theoretical approach, another way to looking at the meaning and nature of Human Rights is pragmatism. Every right whether it has been perceived an inalienable or other wise can have validity and effectiveness only through some process or institution. Thus it cannot be defined without reference to some institutional structure. As a room can not be defined without reference to the walls. So Human Rights can not be defined without reference to institutional settings, therefore, it is important that their exists an internally agreed upon catalogue of Human Rights, which should be minimal definitional guide to understand the essence of human rights and fundamental freedoms¹³.

CONCEPT OF HUMAN RIGHTS:

The concept of Human Rights dated back to the very dawn of Human Civilization, and quite often appears clearly, enshrined in all the great religions of the world. Whether it is one's duty towards a neighbour. The concept of Universal brotherhood and fraternity of mankind coupled with a sense of compassion towards one's fellowmen, have their origins in several religious beliefs both before and after Christ¹⁴. Therefore, the Human Rights in no means are a concept of Modern times, though it appears so, the roots of Human Rights are found very deep in the eternity. In the ancient and ancient most cultures which have been rooted out by passage of times and rule of human atrocities or barbarianism of certain tribes¹⁵. The world's all major religions have a humanist perspective that supports Human Rights, despite the difference in the contents. Human rights are also rooted in ancient thought and in the philosophical concepts of 'natural law' and 'natural rights'. A few Greek and Roman Philosophers recognized the idea of natural rights. Plato (427-348 B.C) was one of the earliest writers to advocate a Universal standard of ethical conduct¹⁶. In recorded history and ancient scriptures, there have been references, on the basic human rights, though they were not referred to by that name. Modern Historians credit to by that concept of Magna Carta A.D 1215. However, All Human rights derive from dignity and worth inherent in the human person and that the human person is the central subject of Human rights and fundamental freedoms, in simple terms, whatever adds, to the dignified and free existence of a human being should be regarded as human rights evolution and crystallization of the concept took a long term. Initially there was confusion between the Natural rights propounded by political philosophers in the bygone ages and the concept of Human Rights. The later is an all-encompassing one¹⁷. In order to understand the term 'Human Rights', conceptually may be fitness of things to take stock of the different concepts given in both west and in the rest of the world.

Western view of Human Rights:

Human rights in the West do not enjoy a permanent position. They have no eternal source criteria of a cosmic order. The entire sources are either imaginary or like the Habeas Corpus, Magna Carta, the Bill of rights, the French Charter of Human Rights and the ten amendments to the American constitution, are documents of a regional nature and are the product of the peculiar political and social conditions existing in Britain, France and America. There the concept of the fundamental rights has developed along with human consciousness. And these rights have been born one by one out of the agreements during the protracted struggle between the people and the king or other rulers, for the division of powers, the decision of the parliament, charter declarations and the theories put up by the political thinkers. As this struggle advanced, the sphere of rights became wider. That is to say, what are being termed as 'fundamental rights' today were not there till yesterday, and if it all they were, they were no more than mere yearnings which had no sanction at their back. Every one of these rights became a right in the true sense of the word only when the law of land and the constitution recognizing it conferred validity on it¹⁸. However, in the Western countries by and large, the real purpose of these rights is to offer protection to the individual against the state. So in the West these rights are given higher position than the common laws framed by the state. By incorporating them in the constitution the legislative powers of the state are limited, and the judiciary is entrusted with enforcement of the fundamental rights¹⁹.

Socialist view of Human Right:

According to Karl Marx and Lenin, the real fountain head of the fundamental rights is the dialectal process of history. These rights have not been conferred on man by nature but are the product of this process, playing their role in the various stages of history; they must finally come to an end in the Communists classes' society. To begin with, these rights helped the bourgeois class in overthrowing the feudal society and establishing the Capitalist Society. Later on, the proletariat's used them as a weapon in their class struggle against the capitalist. Now under the Socialist order these rights are protecting the interests of the toiling people and finally for the sake of freedom and equality, there will cancel themselves out under Communism. According to this philosophy these rights are neither natural nor the essential part of man's person, nor are the impressionable. They have no special significance or importance. They are part of the general law of the land²⁰. Therefore in view of above view, to Socialists, man is sum total of a stomach and matter, and economic struggle in its only goal of life. When this position of man in society has been determined what other rights are there to be conferred on him save food and shelter, and countries guarantee only these material rights and do not recognize any other right based a moral value, it is the logical outcome of their outlook on life. Unless and until they change their view point in relation to man, they can not be expected to extend and expand the sphere of fundamental rights²¹.

RELIGIOUS VIEW:

The World's all major religions have a humanist perspective that supports human rights despite the difference in the contents²². The conception may be felt to originate in the ideas of mercy, kindness, and pity on human beings in various scriptures, Vedas, the holy book of one of the ancient religion, Hinduism also preaching in the Yajur Veda and throws a prism of light on friendly dealing and behaviour with all creatures of the world what to say of only human beings²³.

“Oh Lord! Let my eye view be firm in order that all creatures may look at me by friendly sight. In the same way I also may see all creatures with friendly sight and all of us creatures may see other in friendly view²⁴”.

The same concept can be derived from the contents of ‘The Bible’, where from Paul formulated his doctrine of equality in the following words.

“There is no such thing as Jew and Greek, Slave and freedom, male and female, for you are all one person in Christ Jesus”.²⁵

The Buddhist doctrine of non-violence in deed and thought is a humanitarian doctrine pare-excellence, dating back to the 3rd Century B.c. Furthermore, other religious beliefs both new and old such Judaism, Zarastarianism, Jainism, Sikhism have preached and uphold similar doctrines human rights²⁶. Islam, the divine religion in its origin, lays Iron foundation and found a pride of place in theocracy of all ages. The Islamic practices strengthen the concept of human rights being granted by Allah's Himself. The world has not been able to produce more just and equitable laws than those given 1400 years ago²⁷.

In sum up, it can be said that a rightly, so on that no religion, Ideology, Ism advocated the in human treatment meted out to the members of the society. Therefore the basic source of human rights in all times and in all ages is the region itself and reaffirmed its faith in different civilization from time immemorial.

Origin and Development

The history of Human Rights, in fact, to the times immemorial, however gained impacts only in recent times. It has formally and universally become recognized only after the formation of 1945, which has, as its central concern, reaffirmed its faith in fundamental Human Rights, in the dignity and worth of human rights at all levels under any circumstances. The term Human Rights virtually denotes all those rights which are inherent in our nature and without which we can not live as human beings²⁸. Human rights which are essentially individual in character, for they are meant to be enjoyed by individuals constitute a social phenomenon by virtue of those for whom they are intended²⁹. The history of origin and development of Human Rights is very fascinating. The origin of human is traced by some Scholars back to the times of ancient Greeks. The fact that human rights were recognized as natural rights of man is illustrated by a Greek play Antigone³⁰. Though, the roots for the protection of the rights of man may be traced as far back as in the Babylonian laws, Assyrian laws, Hittite laws and in the all major religions of the world³¹. In Philosophy, the development of the notion of the natural rights of man was contributed by the stoic philosophers. They first developed natural law theory and by virtue of it they explained the nature of human rights. i.e. rights which every human beings possess by virtue of being human³².

Generally it is said that the struggle for human rights started in the Western world sometimes in the beginning of 13th century, which is the great English Charter known as Magna Carta was issued but the fact is that this struggle had started even 200 years prior to the issue of this charter determining the rights of the parliament in 1037 AD. After, that, in 1188 King Alfonso had accepted in Principle of Habeas Corpus. The Second important document was the draft of Right, 1689. Other important documents included the English Bill of Rights, 1689, American declaration of independence, 1776, French declaration of the Rights of man and of the Citizens, 1789 etc³³. Though the established fact is that concept of “Human Rights” was existed, before the “Magna Carta” (Bill of Rights), it self came into existence. However, Magna Carta enjoys the status of a milestone in the history of human rights. Henry I, Stephen and Henry II continued to promise that they will accept this charter but they did not keep their promise. But King John, who was also known as John, the Tyrant because of his hard temperament, signed this charter. It is said that he did bow under the pressure of Barons. This charter was also issued in 1216, 1217 and 1325 after being amended and modified³⁴. The expression ‘fundamental rights of man’ were stated in the declaration and constitutional instruments of many states³⁵. Thus, the term human rights came somewhat late in the vocabulary of mankind. It is a twentieth century name for what has been traditionally known as Natural rights or the rights of Man. It was first used by Thomas Paine in the English translation of the French Declaration of the rights of Man and citizen. The term natural law was replaced because the concept of natural law had become a matter of great controversy and the phrase ‘the rights of man’ was found unsuitable as it was not universally understood to include the rights of women³⁶.

The idea that human rights could be protected by International law in addition to municipal law developed slowly mainly because state sovereignty ... the doctrine of state sovereignty continued to prevail in the nineteenth and early twentieth century where in human rights question were regarded as a matters entirely within each state's own domestic jurisdiction and wholly inappropriate for regulation by international law. International human rights were considered as an attack upon the concept of state sovereignty. No doubt, there were exceptions to the above rule which included the adoption of the slavery conventions of 1926 and the establishment in 1919 of the International labour organization and its subsequent activities. The covenant of the League of Nations adopted at the end of First World War was silent on the issue of human rights. It pledged for the protection of minority rights and respect for the human rights of the subject peoples under the mandate system whereby newly decolonized nations were to be assisted towards political development. However, the protection of human rights was dependent upon the provisions of the natural laws³⁷.

The turning point for the traditional approach in International law came in 1940's in midst of the extreme human rights abuses in war-torn Europe during the World War II shocking crimes were committed against the humanity and there was a total suppression of fundamental human rights. Nazi leaders of Germany have established a regime of complete lawlessness and tyranny. They had barbously negated human values and dignity within their territories under their occupation. It was at that time realized that the restoration of the freedoms and rights to the people is one of the essential conditions for the establishment of international peace and security. Violation of human rights was considered as a source of International conflict and protection of human rights was regarded as necessary for international peace. This conviction was reflected in the proclamation issued by President Franklin D, Roosevelt on January 6, 1941 which came to be known as 'Four Freedoms'. These he listed as freedom of speech, freedom of religion, freedom from want and freedom from fear. In the message he declared; "freedom means the supremacy of human rights every where. Our support goes to those who struggle to gain these rights or keep them". It was rightly recognized goal which can be found through the above freedoms³⁸. The same efforts for the creation of an international organization, in order to establish peace, were being made even when the World War II was in progress. A number of conference and meetings were held before the United Nations, an international organization was established in 1945. Many declaration adopted by the conference laid down the importance of human rights³⁹. Later, at San Francisco conference it was expressed by several delegates that eh United Nation's should established an International Bill of Rights. Although that could not be done it was realized by the members that it should be the obligation of the International community to co-operate in eradicating the scourge of war, and they were therefore determined that the promotion and respect for human rights which at present constitute so important and so conspicuous be an integrated part of the United Nation's charter. The result was that the charter contains provisions for the promotion

and protection of human rights and fundamental freedoms in the preamble and in Articles⁴⁰. After the United Nation's charter came into force, the most important task before the United Nation's was the implementation of the principles of the respect for human rights and fundamental freedom's for all without distinction as to race, sex, language or religion. As laid down under Article 55 of the United Nation's charter. It was therefore, decided to prepare on International Bill of Rights to achieve the end. The General Assembly adopted its on December 10, 1948 through a resolution known as 'Universal Declaration of Human Rights'⁴¹. The resolution was adopted without dissent by forty votes with eight states abstaining⁴². The Declaration consisted of Thirty Articles besides a preamble, they are as follows.

Universal Declaration of Human Rights

43

In December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories".

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people;

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter 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,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, 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.

Universal Declaration of Human Rights:

Article 1.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10.

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13.

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20.

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21.

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Thus, the Universal Declaration of Human Rights stated that the common standard of achievements for the enjoyment and protection of human rights, it was not legally binding on the states. The fact is that it was not intended to be legally binding the commission on Human Rights in 1947, while considering the preliminary draft of an international Bill of Human Rights prepared by the drafting committee, decided to draw up a separate covenant which would be covenant on such specific rights as would lend themselves to binding legal obligations. The documents were to be known as international covenant on Human Rights⁴⁴. So, in this connection, the General Assembly on December 16, 1966 adopted the two covenants. International Covenant on civil and political rights, and International covenant on Economic, Social and Cultural rights⁴⁵. The covenant on civil and political rights consist of 53 Articles and is divided into six parts, while in part I, II and III various rights and freedoms are enumerated, the other three parts are devoted with implementation procedures for effective realization of those rights along with the final clauses. Article I which refers to the right of peoples to self-determination states that all peoples have the right freely to determine their political status and freely pursue their economic, social and cultural developments. These article further states, that the state parties shall promote the realization of the right of self determination and shall respect that right. Part II stipulated rights and obligations of the states parties to the covenant. It included the obligations of the state to take necessary steps to in co-operate the provisions of the covenant in the domestic laws and to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the covenant. The states parties ensure the equal rights of men and women to enjoyment of all civil and political rights. Part III deals with the specific rights of the individuals and the obligations of the States Parties.

1. The right to life (Article 6).
2. Freedom from inhuman or degrading treatment (Article 7).
3. Freedom from slavery, servitude and forced labour (Article 8).
4. Right to liberty and security (Article 9).
5. Right of detainee to be treated with humanity (Article 10).
6. Freedom from imprisonment for inability to fulfill a contractual obligation (Article 11).
7. Freedom of movement and to choose his residence (Article 12).
8. Freedom of aliens from arbitrary expulsion (Article 13).
9. Right to a fair trial (Article 14).
10. Non-retroactive application of criminal law (Article 15).
11. Right to recognition as a person before the law (Article 16).
12. Right to privacy, family, home or correspondence (Article 17).
13. Freedom of thought, conscience and religion (Article 18).
14. Freedom of opinion and expression (Article 19).
15. Prohibition of propaganda of war (Article 20).

16. Right of Peaceful assembly (Article 21).
17. Freedom of association (Article 22).
18. Right to marry and found a family (Article 23).
19. Rights of the child (Article 24).
20. Right to take part in the conduct of public affairs, to vote and to be elected (Article 25).
21. Equality before the law (Article 26).
22. Rights of minorities (Article 27).

The above rights set forth in the Covenant are not absolute and are subject to certain limitations⁴⁶.

The covenant on Economic, Social and cultural rights is consisted of 31 Articles which are divided in five parts. Part I deal with the rights of peoples to self-determination as provided in Article I of the Covenant of Civil and political rights. Other rights of the individuals are enumerated in Part III of the Covenant which included the following rights.

1. Right to work (Article 6).
2. Right to just and favourable conditions of work (Article 7).
3. Right to form and join trade unions (Article 8).
4. Right to social security (Article 9).
5. Right relating to motherhood and childhood, marriages and the family (Article 10).
6. Right to adequate food, clothing, housing and standard of living and freedom from hunger (Article 11).
7. Right to physical and mental health (Article 12).
8. Right to education including a plan for implementing compulsory primary education (Article 13).
9. Right relating to science and culture.

Part II of the Covenant laid down the undertakings of the States parties to the Covenant. Article II provided that each States Party undertakes to steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the Covenant by all appreciate means including particularly the adoption of legislative measures. Thus, the Covenant has set the standard which the States Parties are required to achieve in future⁴⁷.

On the other hand, the evolution of International law related to the protection of war-victims and to the conduct of war, known as International Humanitarian Law has been strongly affected by the development of human rights legal protection after the Second World War. The adoption of important international instruments in the field of human rights such as the UDHR (1948), the International Covenant on Civil and Political Rights (1966), and the International Covenant International Covenant on Economic, Social and Cultural Rights (1966), Contributed to affirm the idea that everyone entitled to enjoyment of human rights , whether in time of peace or war⁴⁸. International Humanitarian law, May in the traditional sense of the term, be defined as the human rights components of law of war⁴⁹.

In other words, it can be said that International humanitarian law is that branch of human rights law which applies in International as well as Internal

armed conflicts with the view to protect the human beings from the consequences of war. The major sources of International humanitarian law are the four Geneva Conventions of 1949 and two 1977 Protocols additional to these conventions and notably:

Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of August 12, 1949.

Geneva Convention for the Amelioration of the Condition of Wounded, sick, and shipwrecked Members of Armed Forces at Sea of August, 1912, 1949.

Geneva Convention relative to the Treatment of Prisoners of War, of August 12, 1949.

Geneva Convention relative to the Protection of Civilian Persons in Times of War, of August 12, 1949.

The two Protocols Additional to the Geneva Conventions are:

Protocol Additional to the Geneva Convention of 12 August 1949, relating to the Protection of Victims of International Armed Conflicts (Protocol I).

Protocol Additional to the Geneva Conventions, of 12 August 1949 relating to the Protection of Victims of Non-internal Armed Conflicts (Protocol II)⁵⁰.

Conclusion

Withstanding this fact, the modern concept of human rights is comprehensive in its nature and content. In fact, the catalogue of rights is expanding every day. It must be noted that no catalogue elaborating specific human rights will ever be exhaustive or final, being man made laws. Its content goes hand in hand with the state of moral consciousness, or development of civilization at any given time in history. By and large, the concept of human rights is very much the product of history and of human civilization. Being as such, it is always subject to evolution and change and that the human rights concept is not static but subject to innovation and change. The historical happenings and evolutionary developments made radical changes on the idea of human rights.

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Notes

- 1 H.O.Agarwal, *Human Rights*, Universal Book Traders, New Delhi,2002, p.2
- 12 H.O.Agarwal, *Human Rights*, p.2
- 3 J. Maritain, *The Rights of man and natural law*, Macmillan, 1951, p.65.
- 4 D.D. Raphael. "Human Rights Old and New", In D.D. Raphael, ed. *Political theory and the Rights of Man*, Macmillan,1967, p.55.
- 5 "Human Rights old and new", In D.D. Raphael, ed. *Political theory and the Rights of Man*, Macmillan, p.57.
- 6 Eddy Asirvatham, "Political theory", quoted in Dr.U.Chandra, *Human rights*, law agency, Allahabad, 1999, p 16.
- 7 Dr.U.Chandra, *Human rights*, law agency, Allahabad, 1999, cited from Thomas Hobes, p 16.
- 8 Dr.U.Chandra, *Human rights*, p 16.
- 9 D.G.Ritichie, *Natural Rights (Philosophical Series)*, Allen and Unwin, London, p(66-82).
- 10 For Instance, right to freedom of speech is not absolute but rather regulated in accordance with the requirements of social expediency. Dr.U.Chandra, *Human rights*, p 17.
- 11 R. Devorkin, *Taking Rights seriously*, Mass publications Cambridge 1977 ,pp 79-92.
- 12 R. Devorkin, *Taking Rights seriously* , p 18.
- 13.Thomas Buergenthal, 'Codification and Implementation of international Human Rights', *Human Dignity- The Internationalization of Human Rights*, Ed. By Alice H.Hankim, Oceana Publication 1979, p 16.
- 14 Dr. Gokulesh Sharma, *Human Rights and Legal Remides*, Deep and Deep Publications , New Delhi, p 70 ,published.....
- 15 DR. V.K. Anand. *Human Rights*, Allahabad law Agency. Mathhra Road U.P, pp 1-2 .year.....
- 16 According to the Roman jurist Ulpian natural law was that which nature and the state assure to all human beings. This meant that foreigners are requested to be dealt in the same way as one deals with one's compatriots. It also implied conducting of wars in a civilized fashion. The Republic (C. 400BC) proposed the idea of Universal truths that all must be recognized people were to work for the common good. Aristotle (384-322 B.C) wrote in *Politics* that Justice, virtues and rights change in accordance with different kinds of constitutions and circumstances. Cicero (106-43 BC), a Roman statesman laid down the foundations of natural law and human rights in his work. The laws (52 B.C), Cicero believed that there should be Universal Human rights laws that would transient customary and civil laws. Sophocles (495-406 BC) was one of the first to promote the idea of freedom of expression against the state. Stoces employed the ethical concept of natural law to refer to a higher order of law that corresponds to nature and which was to serve as a standard for the laws of civil society and government. Later, Christianity, especially, St. Thomas Aquinas (1225-1274) rooted this 'natural law' in a divine law which was revealed to man in part discoverable by man through his God-given right reason. The city state of Greece gave equal freedom of speech, equality before law, right to vote, right to be elected to public officer, right to trade and the right to access to justice to their citizen similar rights were secured to the Roman's by the *Jus Civile* of the Roman law. Thus the origins of the concept of Human rights are usually agreed to be found in the Greco-Roman natural law doctrines of Stoicisin (the school of philosophy founded by Zeno- and Citium) which held that a Universal force pervades all creation and that human conduct should therefore be judged according to the law of nature. S.J. Henle, *A Catholic view of Human Rights*, A Thomistic reflection in Alan S. Rosenbaum, 'The Philosophy of Human Rights', *International perspectives*' (1980). See also H.O. Agarwal ' *Human Rights*', Universal book traders Delhi 2002, p 7-8

- 17 Vijay Kumar, *Human Rights Dimensions and Issues*, Vol I, Anmol Publications .Pvt. Ltd. New Delhi ,p 42 . year.....
- 18 Nayyar Shamsi, *Human Rights and Islam*, Reference press, New Delhi-2003, pp 20-21.
- 19 Nayyar Shamsi, *Human Rights and Islam*, p 25.
- 20 Nayyar Shamsi, *Human Rights and Islam*, Reference press, New Delhi-2003 ,p 24.
- 21 Nayyar Shamsi, *Human Rights and Islam*, p 28.
- 32 H.O. Agarwal, *Human Rights*, p 6.
- 23 Dr.V.K. Anand, *Human Rights*, Allah abad law agency, p 2.
- 24 Yaju (36-38), quoted in Dr.V.K. Anand, *Human Rights*, p 2.
- 25 Dr.Gokulesh Sharma, *Human Rights and Legal Remedies*, Deep and Deep Publication, New Delhi, p 70.
- 26 *Human Rights and Legal Remedies* ,p 71.
- 27 A.A. Mawdudi. *Human Rights in Islam*, Markazi Maktaba Islamic Delhi, 1982, p 56.
- 28 *Teaching Human Rights* , United Nations, New york, 1989, p 5.
- 29 Karel Vasak, “*Human Rights a legal Reality*”. *The International Dimensions of Human Rights*, vol I, English Ed.by Phillip Alston, UNESCO ,pp, 4-10.
- 30 In this play , Sophocles describes describes that Antigone’s brother, while he was rebelling against the kind, was killed and his burial was prohibited by the kind Creon. In defiance of the order Antigone buried her brother. When she was arrested for violating the order. She pleaded that she had acted in accordance with the immutable, “un written laws of heaven” which even the kind could not override. Sophocles Antigon, *The Unwritten, Unchanging laws of the gods*, see also Dr. U. Chandra, “*Human Rights*”, p 1-2.
- 31 P.N. Bhagwati, *Human rights*, International law association Allabad Centre 1980, p 7.
- 32 Galus Eezejoffor, *Protection of Human Rights under the law*, Butter worth London -1964 ,p 3.
- 33 Khwaja. A. Muntaqim, *Protection of Human Rights (National and International Perspectives)*, Law Publishers, India-2004, p 5.
- 34 *Protection of Human Rights (National and International Perspectives)*, p 5.
- 35 For instance, the Declaration of Independence of the thirteen United States of America in 1776. (The Virginia Declaration, 1776): the constitution of the United States of 1778 with amendments in 1789, 1865, 1869 and 1919 specified a number of rights of man. The Virginia Declaration of rights affirmed that all men are by nature equally free and impendent and have certain inherent rights. The French Declaration of the Rights of man and of the citizens of 1789 led other European countries to include the provisions in their laws for the protection of human rights. H. O. Agarwal. *Human Rights*, Universal Book Traders New Delhi 2002 , p 9.
- 36 H. O. Agarwal. *Human Rights*, p 9.
- 37 H. O. Agarwal. *Human Rights*, p 9.
- 38 H.O. Agarwal, *Human Rights*, p 11.
- 39 For instance, see Declaration of ST. James Palace (1941); Atlantic Charter (1941); United Nation Declarations (1942); Moscow Declaration (1943); Tehran Declaration (1943); Dumbarton Oak’s conference (1944); Sun Francisco Conference (1945); etc.
- 40 H.O. Agarwal, *Human rights*, p 11.
- 41 General Assembly resolution 217,(III), December 10.1948, C.F. H.O.Agarwal , *Human Rights*, p 30.
- 42 The following eight states abstained; Byelorussian, Czechoslovakia, Poland, Saudi Arabia, Ukrainian, USSR, Union of South Africa and Yugoslavia, while the representative of the soviet bloc abstained because of disagreement over the narrow treatment of economic and social rights, the South Africa delegate abstained because as he argued, these matters were solely within domestic jurisdiction of his nations. H.O. Agarwal. *Human Rights*, p 30.

- 43 Universal Declaration of Human Rights 1948 (Resolution 217 A III).
- 44 H.O. Agarwal, *Human Rights*. C.F. Report of the Commission on Human Rights, Second Session, See E/600.
- 45 General Assembly Resolution 2200 A (XXI) December 16, 1966.
- 46 H.O. Agarwal, *Human Rights*, pp 41-42.
- 47 H.O. Agrawal, *Human Rights*, p 43 C.f Dr. U. Chandara . *Human Rights* Allahabad Law agency publication , June 1999 , pp184-185.
- 48 Dr.U. Chandra, *Human Rights*, p 432.
- 49 Thomas Buergenthal, *Internal Human Rights*, 1995, p 49.
- 50 DR. U. Chandra, *Human Rights*, p 305. In addition to these documents, international humanitarian law also consists of some earlier declarations and conventions for instance, The Declaration of Paris 1856. The Declaration of Petersburg of 1868, the Hague conventions of 1899 and 1907. The Geneva Gas and Bacteriological warfare protocol of 1925.