

HUMAN RIGHTS: NATURE AND CONSTITUENTS

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1.0 OBJECTIVES

After studying the unit you will be able

- To know the meaning and definition of Human Rights
- To be aware of the characteristics of Human Rights
- To learn about evolution and landmarks in the development of Human Rights
- To get acquainted with the classifications of Human Rights

1.1 INTRODUCTION

In the present chapter a brief introduction of the genesis of human

rights will be taken into consideration. The historical background, the definition of human rights, the characteristics and nature of human rights will be dealt briefly. The landmarks in the development of human rights will be traced so as to know about the evolution of such rights. Further the classification of human rights will also be studied briefly.

1.2 MEANING OF HUMAN RIGHTS

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

1.3 DEFINITION OF HUMAN RIGHTS

Dr. Justice Durga Das Basu defines "Human rights are those minimal rights, which every individual must have against the State, or other public authority, by virtue of his being a 'member of human family' irrespective of any consideration. Durga Das Basu's definition brings out the essence of human rights.

The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as "rights derived from the inherent dignity of the human person." Human rights when they are guaranteed by a written constitution are known as "Fundamental Rights" because a written constitution is the fundamental law of the state.

1.4 CHARACTERISTICS AND NATURE OF HUMAN RIGHTS

Following are the characteristics of human rights:

1. Human Rights are Inalienable - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed, religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.

2. Human Rights are Essential and Necessary - In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.

3. Human Rights are in connection with human dignity - To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For eg. In 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.

4. Human Rights are Irrevocable: Human rights are irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.

5. Human Rights are Necessary for the fulfillment of purpose of life: Human life has a purpose. The term “human right” is applied to those conditions which are essential for the fulfillment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.

6. Human Rights are Universal – Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.

7. Human Rights are never absolute – Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.

8. Human Rights are Dynamic - Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.

9. Rights as limits to state power - Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state's power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals,

or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

1.5 CHECK YOUR PROGRESS

1. Define Human Rights.

2. In what different ways are human rights referred to?

3. Why is it said that human rights are dynamic?

4. How does human right limit the state powers?

1.6 THE EVOLUTION OF HUMAN RIGHTS

The evolutions of human rights have taken place over centuries. Man had to struggle hard in order to achieve the ultimate goal – living with dignity – which still has to be realized in various societies. India itself is an example where women, children, dalits, bonded labourers, etc, is trying hard to be a part of mainstream. Inspite of all these, the world recognized the U.N.Charter of 1945 which states that human rights are inalienable aspect of mankind. The origin of human rights may be traced to the theory of Natural Rights derived from the concept of Natural Law, as propounded by ancient Greek Stoic Philosophers and further developed by Thomas Hobbes and John Locke. The American and French Revolution gave further impetus to the struggle of human rights. The evolution and development of human rights in the international context can be traced to the Magna Carta and the English Bill of Rights followed by the French Declaration and the American Bill of Rights.

The twentieth century witnessed the crystallization of the philosophy of Human Rights when the United Nations adopted the UN Charter, 1945, The Universal Declaration of Human Rights, 1948 and the International Covenants on Human Rights with further emphasis to protection of rights of Women, Abolition of Slavery, Racial Discrimination, Civil and Political Rights, Economic, Social and Cultural Rights and most importantly the Rights of children.

In India the drafters of Constitution took care to incorporate Human Rights for its own citizens as well as for the aliens.

1.7 THE NATURAL RIGHTS THEORY

Though the expression 'human rights' had its origin in international law, which is not older than the World War II, the concept of an individual having certain basic, inalienable rights as against a sovereign State had its origin in the doctrines of natural law and natural rights. Thomas Hobbes (1588 – 1679), John Locke (1632 – 1704) and Jean-Jacques Rousseau (1712 – 1778) are the three main thinkers who developed the Natural Rights theory.

Thomas Hobbes was the first champion of the theory of 'natural rights'. In his celebrated book, 'Leviathan', he advocated that no individual could ever be deprived of the right to life, which he enjoyed in the state of nature. He asserted that all human beings are equal, without any consideration.

John Locke developed the idea further in his book, 'Two Treatises Government.' He argued that every human being has a natural right to life, personal liberty, and property, and that no governmental authority has power to deprive individuals of these rights because they had enjoyed them even before the creation of the civil or political society.

Rousseau is regarded as the greatest master of natural law school. In his celebrated book, 'The Social Contract', Rousseau states that "All men are born free but everywhere they are in chains." Rousseau proclaimed that men are bestowed with inalienable rights of liberty, equality and fraternity. These concepts became the basis for the French Declaration of the Rights of Man and of the Citizen.

Paine an American revolutionary thinker developed the doctrine of natural rights without linking it to the social contract theory. He held that rights are natural, because they were bestowed upon man by God himself. These rights exist independently of the legal code of any country.

1.8 CHECK YOUR PROGRESS

1. State the ultimate goal of human beings?

2. Signify the importance of U.N.Charter of 1945.

3. State the Natural Right according to Thomas Hobbes.

4. Bring out the importance of Rousseau's theory of Natural Right

5. What care did the drafters of Indian constitution take?

1.9 LANDMARKS IN DEVELOPMENT OF HUMAN RIGHTS

The important landmarks in the progress of human rights are as follows:

1.9.1 The Magna Carta, 1215.

The Magna Carta, also known as the Great Charter, of 1215 is the most significant constitutional document of all human history. The main theme of it was protection against the arbitrary acts by the king. The 63 clauses of the Charter guaranteed basic civic and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. King John of England granted the Magna Carta to the English barons on 15th June 1215. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter.

1.9.2 The English Bill of Rights, 1689.

The next source and avenue of the development of the philosophy of human rights is the English Bill of Rights, enacted on December 16, 1689, by the British Parliament. The British Parliament declared its supremacy over the Crown in clear terms. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and clarified the rights and liberties of the citizens.

It lays down the twin foundations, viz., the supremacy of the law, and the sovereignty of the nation, upon which, the English constitution rests.

1.9.3. American Declaration of Independence, 1776.

The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776. The declaration charges the king

with tyranny and affirms the independence of the American colonies. The declaration of independence has great significance in the history of mankind as it justified the right to revolt against a government that no longer guaranteed the man's natural and inalienable rights.

1.9.4. The U.S. Bill of Rights, 1791.

The U.S. Constitution was enacted on 17th September 1787. The most conspicuous defect of the original constitution was the omission of a Bill of Rights concerning private rights and personal liberties. Madison, therefore proposed as many as twelve amendments in the form of Bill of Rights. Ten of these were ratified by the State legislatures. These ten constitutional amendments came to be known as the Bill of Rights. The overall theme of the Bill of Rights is that the citizen be protected against the abuse of power by the officials of the States.

1.9.5. The French Declaration of the Rights of Man and of the Citizen, 1789

The fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles.

The Declaration of the Rights of Man and of the Citizen has far reaching importance not only in the history of France but also in the history of Europe and mankind. The declaration served as the death warrant for the old regime and introduced a new social and political order, founded on the noble and glittering principles. Further the declaration served as the basis for many Constitutions, framed in different countries, where the framers gave top priority to human rights.

1.9.6. Declaration of International Rights of Man, 1929.

After World War I, questions about human rights and fundamental freedoms began to be raised. In 1929, the Institute of International Law adopted the Declaration of International rights of Man. The Declaration declared that fundamental rights of citizen, recognized and guaranteed by several domestic constitutions, especially those of the French and the U.S.A constitutions, were in reality meant not only for citizens of the states but for all men all over the world, without any consideration.

1.9.7. The UN Charter, 1945.

The United Nations Charter was drafted, approved and unanimously adopted by all the delegates of the 51 states, who attended the United Nations Conference at San Francisco. The UN Charter contains provisions for the promotion and protection of

human rights. The importance of the Charter lies in the fact that it is the first official document in which the use of 'human rights' is, for the first time traceable and which also recognized the respect for fundamental freedom.

1.9.8. The Universal Declaration of Human Rights, 1948.

The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10th December, 1948. The Declaration consists of thirty Articles and covers civil, political, economic, social and cultural rights for all men, women and children. The declaration however is not a legally binding document. It is an ideal for all mankind.

1.9.9. International Covenants on Human Rights

The Universal Declaration of Human Rights, 1948 was not a legally binding document. It lacked enforcements. This deficiency was sought to be removed by the U.N. General Assembly by adopting in December, 1966, the two Covenants, viz,

1. International Covenant on Civil and Political Rights and
 2. International Covenant on Economic, Social and Cultural Rights.
- The two International Covenants, together with the Universal Declaration and the Optional Protocols, comprise the International Bill of Human Rights. The International Bill of Human Rights represents a milestone in the history of human rights. It is a modern Magna Carta of human rights.

1.9.10 CHECK YOUR PROGRESS

1. What is the Magna Charta also known as?

2. How is the American Declaration of Independence, 1776 justified?

3. State the importance of the French Declaration of the Rights of Man and of the Citizen, 1789.

4. What is the importance of the UN Charter, 1945?

5. Name the two covenants adopted by the U.N. General Assembly

1.10 CLASSIFICATIONS OF RIGHTS

Human rights can be broadly classified on five bases. They are:

- Civil Human Rights
- Political Human Rights
- Economic Human Rights
- Social and Cultural Human Rights
- Development Oriented Human Rights

a. The seventeenth, eighteenth and nineteenth centuries contributed and strengthened the civil and political rights, which assured civil and political liberties. The Civil and Political Human Rights are collectively known as 'Liberty Oriented Human Rights' because they provide, protect and guarantee individual liberty to an individual against the State and its agencies. Liberty rights also referred to as Blue Rights are the First Generation of Human Rights.

b. The twentieth century contributed to the development and strengthening of economic, social and cultural rights and the rights of minorities as well. These rights aim at promotion of the economic and social security through economic and social upliftment of the weaker sections of the society. These rights are essential for dignity of personhood as well as for the full and free development of human personality in all possible directions. These rights ensure a minimum of economic welfare of the masses and their basic material needs, recognized by the society as essential to civilized living.

The economic, social and cultural rights, including the rights of the minorities are collectively known as the "Security Oriented Human Rights" because these rights collectively provide and guarantee the essential security in the life of an individual. In the absence of these rights, the very existence of human beings would be in danger. These are also known as the "Second Generation of Human Rights". They are also referred to as Red Rights or also as positive rights. These rights along with the Civil and Political Rights were declared by the Universal Declaration of Human Rights and later were recognized by (1) the Covenant on Civil and Political Rights and (2) the Covenant on Economic, Social and Cultural Rights in December 1966.

c. The Development Oriented Human Rights are of a very recent origin in the late twentieth century. These rights enable an individual to participate in the process of all round development and include environmental rights that enable an individual to enjoy the absolutely free gifts of nature, namely, air, water, food and natural resources, free from pollution and contamination. These are known as the Third Generation of Human Rights or Green Rights. They are also called as Solidarity Rights, because their implementation depends upon international cooperation.

Solidarity rights are of special importance to developing countries, because these countries want the creation of an international order that will guarantee to them the right to development, the right to disaster relief assistance, the right to peace and the right to good government.

Rights for Citizens and for all persons.

All human rights can be further classified into two distinct classes on the basis of the eligibility of individual, who can exercise them as under:

1. The rights for citizens and 2. The rights for all persons

Certain rights are conferred only on citizens. For eg. In the Indian constitution provisions in Articles 15, 16, 19 and 29 are limited to citizens. The remaining provisions in Part III of the Indian Constitution are applicable to citizens and aliens alike.

1.10.1 CHECK YOUR PROGRESS

1. Name the three generations of human rights.

2. What is meant by civil and political rights.

3. Bring out the meaning of development oriented right.

4. Differentiate between rights of citizens and for all persons.

1.11 SUMMARY

Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. They are essential for all individuals to protect themselves against the State or public authority or against members of its own class. Human rights are characterized as inalienable, connection with human dignity and necessary for the purpose of fulfillment of human life.

The evolutions of human rights have taken place over centuries. The twentieth century witnessed the crystallization of the philosophy of Human Rights when the United Nations adopted the UN Charter, 1945, The Universal Declaration of Human Rights, 1948 and the International Covenants on Human Rights with further emphasis to protection of rights of Women, Abolition of Slavery, Racial Discrimination, Civil and Political Rights, Economic, Social and Cultural Rights and most importantly the Rights of children.

Human rights have been classified in different bases. Each right signify the awareness and emancipation of a particular century. For eg. The development oriented rights belong to the twentieth century which is essential to maintain world peace as well as right to clean and wholesome environment along with environment protection and improvement.

1.12 KEYWORDS

Universal Declaration of Human Rights (UDHR), Inalienable, U.N.Charter, Magna Carta, Natural Rights International Covenants on Human Rights, Social and Cultural Human Rights, Development Oriented Human Rights, Solidarity rights.

1.13 UNIT END QUESTIONS

1. Define the term human rights. Bring out any six characteristics of human rights.
2. Who were the propagators of natural rights theory? What did they state in their theories?
3. State in detail the landmarks in the development of human rights.
4. Explain the theory of three generations of human rights.
5. Discuss in detail the different bases of classifying rights.

1.14 REFERENCE:

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