

by strengthening the existing infra structural facilities and improving the budgetary allocations. It is needless to state that, a Nation

which fails to provide at least the primary education to its future citizenry is bound to remain backward.

PHILOSOPHY AND DEVELOPMENT OF HUMAN RIGHTS – AN OVERVIEW

By

–Ch. MADHU, B.A., L.L.M.
Advocate,
Hanamkonda, Warangal

Human rights are rights that are attached to human beings and function as moral guarantees in support of our claims towards the enjoyment of a minimum good life. In conceptual terms, human rights are themselves derivative of the concept of a right. In order to understand philosophical foundation of concept of human rights, the distinction between moral rights and legal rights are necessary to understand the basis and potential development of human right. Thus with this back-ground an attempt has been made to project philosophical and historical foundation of Human Rights in this article.

Concept and development of Human Rights : Philosophical approach

In general, legal rights refer to all those rights found with in existing legal codes and it is a right that enjoys the recognition and protection of the law. Questions as to its existence can be resolved by simply locating the relevant legal instrument or piece of Legislator. On the other hand moral rights are not rights in the strict sense, but are better thought of as moral claims, which may or may not eventually be assimilated with in national or international law. For a legal positivist like *Jermay Bentham*,¹ there can be no such thing as human rights existing

prior to, or independently from legal codification. For a positivist determinating the existence of rights is no more complicated than locating the relevant legal statute or precedent. Thus, moral rights are rights that exist prior to and independently from their legal counterparts. The existence and validity of moral rights is not deemed to be dependant upon the actions of Jurists and Legislators. One should believe that Fundamental Rights which may or may not have received legal recognition elsewhere, remained valid and morally compelling even in those countries whose legal systems have not recognized these rights. Therefore, it appears that human rights are best identified as moral rights.

Human rights certainly share an essential quality of moral rights because their valid existence is not depending upon their beings legally recognized. Human rights are meant to apply to all human beings everywhere, regardless of whether they have received legal recognition by all countries everywhere. Clearly, there remain numerous countries that wholly or partially exclude formal legal recognition to Fundamental Rights. Supporters of human rights in these countries insist that rights remain valid regardless, as fundamental moral rights. The universality as moral rights clearly lends greater moral force to human rights². It would be a mistake to exclusively identify human

1. See *Andrew Fagan's*. Essay on Human Rights, <http://www.iep.utm.edu/h/hum- rts.htm#H2>.

2. Ibid.

rights with moral rights. Human rights are better thought of as both moral rights and legal rights. Thus, human rights originate as moral rights and the practical efficiency of human rights is largely rest on their developing into legal rights.

Magna Carta and Development of Human Right

Human rights can be traced historically from several ancient documents which included a variety of concepts rights that may be considered to be human rights. Notable among such documents are Magna Carta which is particularly significant in the history of human rights. In 1215 King John of England issued the Magna Carta, a document forced upon him by the Pope and English baron, which require him to renounce certain rights, respect certain legal procedure and accept that the will of the king could be bound by law and the main theme of Magna Carta was protection against arbitrary acts by the King.³ Though the Magna required king to renounce certain rights, yet the document did not itself limit the power of the king in the middle Ages. However its reinterpretation in the Elizabeth and Stuart periods established it as a powerful document on which constitutional law was founded in Britain and elsewhere. Be that as it may, in 1216-17, during the reign of John's son, Henry III, the Magna Carta was confirmed by Parliament, and in 1297 Edward I confirmed it in a modified form. Although the Charter applied to privileged elite, gradually the concept was broadened to include all Englishmen in the Bill of Rights in 1689 and eventually all citizens. Thus, it is said that this development in the history ultimately led to the parliamentary supremacy by the Petition of Rights in 1628, and by the Bill of Rights, in 1689, to form the platform for the rule of laws in England and to give documentary authority in England. Elsewhere societies have located the concept of human rights in

the writings of St. Thomas Aquinas and Grotious wherein human rights was described as eternal and inalienable rights⁴.

The expression 'fundamental rights of man' was stated in the declarations and constitutional instruments of many other States. For instance, the Declaration of Independence of the Thirteen United States of America in 1776⁵; the Constitution of the United States⁶, specified a number of rights of man. The Virginia Declaration of Rights affirmed that all men are by nature equally free and independent and have certain inherent rights. The French Declaration of the Rights of Man and Citizen,⁷ enlightened countries to add the provisions in their laws for the protection of human rights, wherein it was stated that "all men are created equal, that they are endowed by their creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness." Since the beginning of the nineteenth century it was recognised by most of the States that human beings possess certain rights. Worth of the human personality began to be realized. Therefore, the term human rights came somewhat late in the vocabulary of mankind. It was first used by Thomas Paine in the English translation of the French Declaration of the Rights of Man and Citizen⁸.

Development of Human Rights : The Post World War-II Era :

Development of Human Rights geared up after the World War-II. During the World War II, the whole world was shocked due to heinous crime committed against the humanity and human rights were totally

3. www.derechos.org/human.

4. H.O. Agarwal, International Law and Human Rights, Central Law Publication, Allahabad, Edn, 2003.

5. The Virginia Declaration, 1776.

6. Adopted in the year 1787 with amendments in 1789, 1865, 1869 and 1919.

7. Declaration of Rights of Man and Citizen approved by the National Assembly of France, August 26, 1789.

8. See Supra Note.4.

suppressed. Nazi leaders of Germany had established a regime of complete lawlessness and tyranny. They had barbarously negated human values and dignity within their territories under their occupation. Violation of basic human rights was considered as a source of international conflict and protection of human rights was regarded as necessary for international peace. It was at that time realised 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. This conviction was reflected in the proclamation issued by the 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 everywhere. Our support goes to those who struggle to gain these rights or keep them."⁹ In order to establish peace so many efforts have been made even when the World War II was in progress and after the World War II for the creation of an international organization. Due to this efforts an International Organisation, was established in 1945.

Development of Human Rights and UN:

After the establishment of United Nations Organisation many declarations are adopted by it to codify the human rights.

The Universal Declaration of Human Rights was proclaimed by the UN General Assembly on 10 December 1948 without any dissenting vote. It is obvious that though it is not legally binding in itself, it has proved to be the starting point of a new legal order in the world. Much of it is now customary law and a major part of the Declaration has become part and parcel of the national constitutions of states¹⁰. More significant, it

laid the foundations of a wide range of Covenants and other international legal instruments which are binding, when ratified, on national Governments. The Covenant on Economic, Social and Cultural Rights, and the Covenant on Civil and Political Rights. Both of these came into force following 35 ratifications for both in 1976¹¹. So the international law of human rights is really quite recent. The two UN Covenants had at last, however, laid down the legal foundation for a world order of human rights, from which nobody on earth was excluded.

Universal Declaration of Human Rights, 1948 and subsequent conventions and treaties have set common standards of achievement for all people and all nations to promote and respect for these fundamental human rights and freedoms by adopting progressive measures at national and international level to secure their universal and effective recognition and observance, both among the people of Member States themselves and among the peoples territories under the jurisdiction.

Conclusion :

Human rights have a long historical heritage. The principal philosophical foundation of human rights is a belief in the existence of a form of justice valid for all peoples, everywhere. In this form, the contemporary doctrine of human rights has come to occupy centre stage in geo-political affairs. The language of human rights is understood and utilized by many people in very diverse circumstances. Human rights have become indispensable to the contemporary understanding of how human being should be treated, by one another and by national international political bodies. Human rights are best thought of as potential moral guarantees for each human being to lead a minimum good life.

9. Ibid

10. See Supra Note, 1.

11. http://en.wikipedia.org/wiki/Human_rights.