



Jurisprudential aspect of human right: A contemporary analysis

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Abstract

“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.”

This paper conducts an in-depth exploration of the various aspects of human rights by examining the works of scholars and jurists, legal precedents, and both domestic and international human rights agreements, especially those established under the United Nations. Human rights have evolved into a universally recognized and fundamental principle in international law known as a jus cogens rule.

The motivation behind this paper is to shed light on the historical development and dynamics of human rights, given their increasing significance. By employing a theoretical and doctrinal approach, the paper seeks to assess the diverse facets and implications of the concept of human rights and how they impact our daily lives. One of the key findings is that the enforcement and significance of human rights law are more firmly established on the global stage compared to within individual nations.

In conclusion, the paper argues that human rights matters are no longer solely within the purview of a single nation's domestic affairs, considering the existence of binding international agreements. Consequently, the paper recommends that national governments should exhibit greater awareness and responsiveness to the elevated status of human rights as an international concern.

Keywords: Human beings, human rights, international law, Human rights

Introduction

Human rights are assertions and privileges that focus on the inherent dignity of individuals and their status as members of the human race. Legal scholars and jurists concur that human rights that are intrinsic to every human being, surpassing ordinary national laws and existing even before the formation of political societies. These rights are typically categorized into three groups: civil and political rights, economic, social, and cultural rights, and group or collective rights. Human rights activists' stress that individuals should have access to and benefit from all three categories to fully enjoy their human rights.

The historical roots of human rights can often be traced back to religious contexts. For example, in the Garden of Eden, God granted Adam a fair hearing when he inquired about how Adam became aware of his nakedness. In 442 BC, the Greek playwright Sophocles portrayed King Creon as powerless against the unwritten laws of God. During this period, there was a strong intellectual connection between the principles of natural law and those of the natural rights of individuals. As a result, many human rights concepts have their origins in natural law theories.

The philosophies and concepts of human rights continued to evolve through the eras of the League of Nations and the United Nations. However, it was under the United Nations that human rights received their most significant impetus. Global events, such as nationalist and independence movements, contributed to the popularization of human rights awareness and consciousness. These developments led to the creation of numerous international human rights agreements, with many of them binding on nations that are

parties to these agreements. Some are also considered part of customary international law and are therefore binding even on nations that have not ratified them, establishing them as jus cogens rules of international law.

Today, human rights are universally recognized and accepted as fundamental principles of international law. Any grave violation of these rights anywhere in the world is seen as a matter of international concern and should prompt action against the violators, particularly through the United Nations. This paper provides a comprehensive discussion of the origins, nature, development, and contemporary status of human rights in international law.

Conceptual Framework

It is valuable to initiate a discussion on human rights or any of its aspects by examining the concept itself. The term "human" pertains to or characterizes humanity or mankind. It signifies being related to people rather than animals, machines, or deities. On the other hand, "right" derives from the Latin word "rectus," meaning correct, straight, and in accordance with law, morality, and justice. Something is considered "right" when it aligns with these principles, while anything falling below the established standard is deemed "wrong." "Right" denotes something to which an individual can rightfully lay claim, whether it pertains to animate or inanimate objects. This may encompass rights to land, the dignity of a human being, the right to life, or the right to a fair hearing. When someone claims to have a "right" over something, they are essentially asserting that others have a duty not to infringe upon that right, just as they themselves have a duty not to violate the rights of others.

Justice C. A. Opata provides a general definition of a right, explaining that it is either the freedom (protected by law) to act or abstain from acting in a specific manner or the authority (enforced by law) to compel a particular person to perform or abstain from a specific action. A legal right, therefore, is the capacity residing in one person to control the actions of others with the consent and assistance of the state. This suggests that every right involves a person with the right, a person or persons on whom that right imposes a corresponding duty, a specific act or forbearance that is the subject of the right, and in some cases, an object, which is a person or thing to which the right is related, as in the case of ownership. In essence, a right is a well-founded claim, and when a particular claim is recognized by civil law, it becomes an acknowledged or legally enforceable right.

The term "human rights" has generated various definitions and interpretations, leading to ongoing debates among jurists, publicists, and human rights activists. A universally accepted definition has yet to emerge. Defining human rights is a complex task due to the diversity of perspectives, backgrounds, and emotions involved. Despite the challenges, legal writers and jurists have proposed several definitions. One notable definition, presented by Cranston, characterizes human rights as those things that no one may be deprived of without a significant affront to justice. He emphasizes that certain actions should never be taken, specific freedoms should never be infringed upon, and some things are supremely sacred, with human rights being among them.

Human rights are considered inalienable and are not subject to curtailment or denial, except in situations permitted by law, such as lawful imprisonment following due process or the confiscation of property from a judgment debtor. These rights are inherent to all human beings, regardless of their location or identity, and they are not granted by governments or individuals. Human rights are attached to individuals wherever they go. States do not bestow human rights, and thus, they cannot permanently withdraw or revoke them from individuals. States, in fact, have a responsibility to promote and protect human rights, extending this duty to all individuals regardless of their sex, nationality, race, political opinions, or social groups. Consequently, no legal, political, or constitutional authority can invalidate human rights.

Human rights can be categorized into three groups or generations. The first comprises civil and political rights, including the right to life, dignity, freedom of movement, assembly, free speech, fair hearing, and freedom from discrimination. The second group encompasses economic, social, and cultural rights, such as the right to education, health, work, and social security. The third group is known as group rights, which include the right to self-determination, development, the right to dispose of natural resources, and the right to national and international peace and security. These rights are interrelated, and to fully enjoy human rights, an individual must benefit from all three categories.

The origins of human rights can be traced back to religious contexts, with early examples found in ancient writings. The notion of natural law and the connection to the natural rights of individuals played a significant role in the development of human rights. These natural or fundamental rights of individuals were seen as essential for the fullest development of their personalities, spirituality, and moral

independence. A clear distinction existed between natural law and man-made or positive law, and natural law, or the law of nature, was considered superior.

Throughout history, rights evolved and expanded, especially through treaties and international law. The influence of thinkers like Grotius, Vattel, Pufendorf, and Wolff, as well as documents like the Magna Carta, contributed to the recognition of rights. The spread of these ideas to the American colonies and the subsequent American Declaration of Independence in 1776 emphasized the inherent rights of all individuals. These principles also influenced European constitutions and eventually led to the development of human rights in international law.

The United Nations has played a crucial role in the development of human rights in modern times. The Universal Declaration of Human Rights, adopted in 1948, became a standard for measuring human rights across the world. It also served as the basis for binding international agreements such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. The UN Charter enshrines the promotion and protection of human rights as one of its principal objectives, and member states commit to taking action to achieve universal respect and observance of human rights.

Today, human rights have an international character and are considered a matter outside the realm of domestic jurisdiction. States cannot invoke domestic jurisdiction to exclude international intervention in cases of reported human rights violations. Many nations have incorporated human rights into their national constitutions and foreign policy, and the granting of aid by well-to-do nations is often linked to respect for democracy and human rights.

The world is divided into regions and sub-regions for the convenience of international organizations, and each region has made efforts to crystallize human rights within its borders. Regional systems such as the European, inter-American, and African systems have developed their own frameworks for the protection and promotion of human rights. These systems have contributed significantly to the body of international human rights law and practice. The European system, established by the Council of Europe, includes the European Convention on Human Rights and the European Social Charter. The inter-American system, led by the Organization of American States, relies on the American Convention on Human Rights. The African system, functioning under the African Union, is based on the African Charter on Human and Peoples' Rights and includes the African Court of Justice as an enforcement mechanism.

In conclusion, human rights have evolved through history, driven by various influences and contexts. The United Nations has played a pivotal role in their development, and they have assumed an international character. Regional human rights systems have also made substantial contributions to the global understanding and practice of human rights.

The United Nations and Human Rights

The establishment of the United Nations created high hopes and expectations among oppressed people worldwide, who believed that the organization would bring them the long-awaited freedom and justice they deserved. Consequently, the United Nations began receiving numerous petitions from individuals and non-governmental organizations, alleging

human rights violations and seeking the UN's intervention. The earlier League of Nations had limitations in providing support to minority groups due to traditional international law concepts of state sovereignty and territorial jurisdiction. This led to a lack of coordinated efforts in addressing human rights issues globally.

Initially, the Economic and Social Council (ECOSOC) and the United Nations Commission on Human Rights were hesitant to deal with petitions regarding human rights violations. However, ECOSOC Resolution 1235 in 1967 and ECOSOC Resolution 1503 in 1970 provided a framework for addressing gross violations of human rights. Resolution 1235 allowed the examination of situations like apartheid in South Africa and racial discrimination in Southern Rhodesia, while Resolution 1503 established a petition system for consistent patterns of human rights violations. Proceedings under Resolution 1235 were public, while those under Resolution 1503 were confidential.

In 1971, the sub-Commission adopted Resolution 1 (XXIV), which set criteria for admitting communications under ECOSOC Resolution 1503. These communications were considered admissible only if they indicated a consistent pattern of gross and reliably attested human rights violations. This procedure applied to situations of gross violations worldwide and focused on large-scale or systematic abuses rather than individual cases.

Petitions received under the 1503 procedure were first examined by a working group within the sub-Commission. The working group could refer them to the sub-Commission, which had the authority to decide whether to forward the petition to the Commission. The Commission had its own working group to screen petitions. Once a situation was identified as governed by the 1503 procedures, the Commission could refer it to the Economic and Social Council. Both ECOSOC and the General Assembly could adopt resolutions calling on governments to remedy the situation and comply with their UN Charter obligations. In extreme cases, the General Assembly could recommend that member states impose voluntary sanctions on the uncooperative government.

Another significant step in strengthening the United Nations' response to human rights violations occurred in 1994 when the office of the High Commissioner for Human Rights was established. The High Commissioner took on the primary responsibility for UN human rights activities, aiming to remove obstacles and prevent ongoing human rights violations globally.

Specialized United Nations conventions established committees to address and enforce the rights of specific vulnerable groups. For example, the International Convention on the Elimination of All Forms of Racial Discrimination created the Committee on the Elimination of Racial Discrimination (CERD), while the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) established a committee to monitor and report on the status of women's rights. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment created the Committee against Torture (CAT), which had powers to address complaints and conduct investigations, especially in cases of systematic torture.

These developments led to a legal principle that holds that a state engaging in gross human rights violations, as declared in international instruments like the Universal Declaration, violates its UN Charter obligations (Articles 55 and 56). The

United Nations is authorized to take appropriate measures under Article 2 (7) of the Charter to compel such states to cease these violations. Incorporating international law into domestic law became a crucial aspect of implementing human rights, and states were expected to conform to their international obligations.

The United Nations' role in human rights faced challenges, including the decline in credibility of the Commission on Human Rights, which led to the establishment of the Human Rights Council in 2006, aimed at addressing human rights violations more effectively.

Additionally, the text highlights the significance of international humanitarian law, which includes the Hague and Geneva Conventions and Additional Protocols I and II. These conventions aim to protect people from atrocities during armed conflicts. They apply to all nations, regardless of their UN membership. Those responsible for war crimes, crimes against humanity, genocide, and crimes against peace can be punished according to United Nations rules. Special international tribunals, like the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court in The Hague, have been established to prosecute individuals for such offenses.

Present Status of International Human Rights

Human rights have made significant strides in international law, particularly since the end of World War II. With the establishment of the Universal Declaration of Human Rights, numerous international human rights treaties and conventions have been developed, adopted, and ratified by countries worldwide. This progress is an encouraging sign of a society's commitment to justice, the rule of law, and human rights, and it serves as an indicator of civilization and development.

Unfortunately, in many developing countries where the majority of the population faces economic disadvantages and political alienation, concepts like justice, human rights, and the rule of law are often viewed as luxuries available only to the privileged few and the upper class. However, these treaties have shifted certain rights and actions from the exclusive domestic jurisdiction of states to become legitimate concerns for all parties involved. Therefore, other parties can rightfully raise concerns and complaints about serious human rights violations within a particular jurisdiction. Government officials cannot dismiss criticism by asserting that these violations are part of a cultural or traditional practice.

It's crucial to recognize that human rights should no longer be dismissed in developing countries as a Western trend to be ignored. While there are still instances of human rights breaches worldwide, the progress in international human rights law and practice is substantial. The sheer number of human rights treaties and the fact that compliance with them is considered a fundamental aspect of civilized state behavior has made respect for human rights a preemptory norm in contemporary international law. This means that human rights principles take precedence over other rules that may conflict with them.

As a result, human rights have become too significant to be left to the discretion of government officials, especially in developing countries that often exhibit a propensity for undemocratic leadership with a distorted view of modern governance. In today's world order, international human

rights have become a paramount standard for measuring global development and the progress of humanity. All aspects of scientific, economic, infrastructure, and political development in nations are now guided, determined, and regulated by universal human rights standards.

Role Of Judiciary In Enforcement Of Human Right In India

The judiciary plays an important role in protecting the constitutional rights of the people from the State actions. Today, the Judiciary is no more concerned only with application of laws made by the legislature, but on the contrary it has assumed an active part even in law making process by way of judicial activism. The Supreme Court of India has displayed a remarkable craftsmanship to promote and protect human rights. The Apex Court has succeeded in reading one of the DPSP into Part III of the Constitution through creative exercise with respect to the Indian Constitution which has taken place in the context to Article 21. Until the decision of Maneka Gandhi's case, the role of the judiciary was that of a passive innature. This nature suddenly became active in 1978 in Maneka Gandhi v. Union of India²¹In this case the Supreme Court held that any State action affecting life and liberty of a person has to be right, just, fair and reasonable and not arbitrary. A new trend was set in Maneka Gandhi case. The Supreme Court in order to protect human rights has sometimes assumed a dual role of both Legislature as well as Executive (the other two organs of the Government), though the Constitution does not confer such omnipotent power on the judiciary

It was the judiciary who had to invent a new form of action to provide remedies to the sufferers of human rights violations, such as poor, underprivileged and downtrodden section of the society. For instance, in Bandhu Mukti Morcha v. Union of India²²The Court treated and ordered the release and rehabilitation of the bonded labourers. Similarly, in M. C. Mehta v. Union of India,²³the Supreme Court held that the power of the Court under Article 32(1) is not only is a substantive in nature, that enforces the fundamental rights, but it is also remedial in scope. The Supreme Court also did not hesitate to assume the legislative function whenever there is no legislation on a certain issue. Accordingly in Vishaka v. State of Rajasthan,²⁴the Supreme Court has virtually enacted a piece of legislation on the ground that there is a vacuum in the legislative field of sexual harassment of women at work place, by virtue of power conferred under Article 141 of the Constitution. In this case Supreme Court laid down some guidelines and norms which are directed to be treated as law until a suitable legislature is enacted by the Parliament in its place. After the judgement of the court in the case of Justice KS Puttaswamy V union of India²⁵In which it was held that right to privacy is an intrinsic part of fundamental right under Art 21 of the Indian constitution which has automatically been reaffirmed. As Art 21 is considered to be the heart of constitution in which reside basic principle of human rights and after this landmark judgement will provide for the foundation for the human right based upon new jurisprudence in civil, economic, social, cultural and political human right the legacy of Puttaswamy case would become what it promises to be the foundation for new transformative for human rights in India

Conclusion

International human rights law is described as the body of legislation that deals with promoting and defending people' and groups' internationally protected rights against government breaches. Several international legal ideas and institutions are the historical forerunners of international human rights law. International humanitarian law, the League of Nations' Minorities and Mandates systems, protection of minorities, humanitarian intervention, and State responsibility for harm done to foreign nationals are among the most significant of these institutions and ideas. These organisations and concepts can be considered essential components of modern international human rights law to the degree that they continue to exist today.

Conventional international law gave rise to a number of theories and establishments intended to safeguard diverse human rights, including those of slaves, minorities, native people, foreign nationals, and so on. The intellectual and institutional foundations of modern international human rights law were established by such legislation and practise. In several other areas, modern international law of human rights has been greatly impacted by its predecessors, even if many of the more traditional institutions and concepts still exist today or have always been a part of it.

Whatever the case, scholars agree that the most significant difference between modern international human rights law and its historical forebears is that, unlike the previous situation in which States rather than individuals were subjects of and had legal rights under international law, today's individual human beings have internationally guaranteed rights as individuals and not as nationals of a particular State. A rising number of international organisations now have the authority to defend people against abuses of human rights by both their own country and any other state. The protection of human rights has become one of the most important topics on the agenda of contemporary international economic and political discourse involving governments, intergovernmental organisations, and a vast network of non-governmental organisations, despite the fact that these remedies are frequently quite inadequate or ineffective. This is due to the vast body of international human rights law currently in existence and the growing number of international institutions designed to implement the law. Thus, there has been a great deal of change and advancement in modern international human rights legislation.

The advancement of human rights to its current state has been greatly aided by the United Nations. There has been a noticeable trend among regional organisations such as the African Union to emulate the United Nations' policies. Sub-regional organisations that have ratified treaties and put in place systems for the defence of human rights, such as ECOWAS, have also not been excluded. Human rights have, in fact, rightfully taken on an international dimension. It is among the things that the UN Charter's Article 2(7) home jurisdiction provision does not apply to, meaning that a State cannot claim domestic jurisdiction to bar international interventions in circumstances of purported human rights breaches. Human rights are now fundamental components of the foreign policy and national constitutions of the majority of countries. Aid, be it military, technical, or economic, from developed countries and international organisations is increasingly contingent upon democracy and human rights compliance. Human rights are now the

centre of attention in global politics and are a reassuring breeze that is swiftly blowing throughout all of the continents. Maintaining this pace has several potential advantages for global peace and security as well as national economic development.

Reference

1. Buergenthal. Thomas. *International Human Rights in a Nutshell*, 2nd ed. (Minnesota, West Publishing Co., 1995).
2. Buergenthal. Thomas. "Implementing the UN Racial Convention (*Texas International Law Journal* Vol. XII, 1977).
3. Buergenthal, Thomas. "The United Nations and the Development of Rules Relating to Human Rights. *Proceedings of the American Society of International Law* (Cambridge: Cambridge University Press, 1965).
4. Cranston, Maurice. Human Rights: Real and Supposed in Raphael D., ed., *Political Theory and the Rights of Man* (Bloomington: Indiana University Press, 1967).
5. Dowrick FE. ed., *Human Rights, Problems, Perspectives and Texts*, (Ashgate Publishing Limited, 1979).
6. Theoder Meron. Human Right In international law: legal and policy, 1984, 3.
7. Human Rights. Nature and Constituent https://archive.mu.ac.in/myweb_test/SYBA%20Study%20Material/fc.pdf
8. The Jurisprudence of the Inter-American Court of Human Rights by Dinah Shelton <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1422&context=auilr>