
Evolution of Human Rights: An Analysis

**Kavita, Research Scholar,
Department of Religious Study, G.J.U., Hisar**

ABSTRACT

In the past two decades, the revolutionary force of the demand for human rights has become unusually clear. Violation of human rights is one of the most worrying problems of our times for the entire world civilization. As human rights violations become commonplace, there is an urgent need to develop a strong society based on the fundamental principles of acceptance of human rights both in theory as well as in practice: unity, morality, spirituality and secularism.

Keywords: - Unity, Justice, Violation, Dignity.

Introduction:-

Human Rights is a dynamic and live concept which must be treated with sensitivity. Its meaning has to be interpreted and understood with the changes brought in by developments in the social, economic, cultural, civil and political spheres. These developments also give rise to aspirations of the people to be able to exercise their rights of equality and justice in its finer aspects. The evolution of human rights, after all, depends on the evolution of mankind.¹

The concept of Human Right is based on the assumption that human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all human beings by virtue of the member of the humanity alone. Today these claims are articulated and formulated then called as human rights. Equal dignity of all persons is the central concept of all human rights. These rights have been designated to be universal in application, inalienable in exercise and inherent to all persons. Human beings are entitled to some basic and natural rights otherwise their life would be meaningless. Human rights are those rights which are inherent in our nature and without which we cannot live as a living as a human being. Human Rights and Fundamental Freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of human being will receive respect and protection. Human rights are sometimes called fundamental rights or basic rights or natural rights. As fundamental or basic rights they are those which must not be taken away by any legislature or any act of the government and which are often set out in a constitution. As natural rights they are seen as belonging to men and women by their very nature. Another way to describe them would be to call them 'common rights', for they are rights which all men or women in the world should share, just as the common law in England. The legal duty to protect human rights includes the legal duty to respect them.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.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 state⁴

Origin and Development of the Human Rights:-

The origin and development of human rights has been on two bases, the first is **National** and the second is **International**.

On the national base, the conception of human rights got its breed to originate and develop in the form of religion in different countries and in different times. The conception may be felt to originate in the ideas of mercy, kindness and pity of human beings in various scriptures. Vedas are the most ancient or the first, religious book of mankind, revealed in aaryavarta the great land Aryans.⁵

On the international basis ,when the human rights fall into jeopardy or when the people suffer under the systematic persecutions from the head of the state the revolution takes place. Study any revolution and we shall be convinced that its germination starts from the violation of human rights. This right was denied in France and it naturally led to the revolution which began in 1789.The French monarchy was overthrown and the heads fell like

‘Slates’ and the river of blood surged on from the guillotines set up to end the despotic regime. It culminated in the start of the Napoleonic era in1799. The human rights ought to be given to the people or one day that may well wrest it from the grip of the despot or any despotic system. The war of independence in America was carried on by the thirteen American colonies against Great Britain, having being waged from 1775-1783.the political rights is asserted as it was done to obtain independence in our country. Mahatma Gandhi was the helm of it. It so happened with the Chinese revolution (1911-1912) which was inspired by

Sun-Yat-Sen with the result that Manchurian Empire was overthrow and a republic was established. The human rights cover a wide area, right from the right to live to the economic and political right. Recently the women's lib movement has been assuming large proportions awakening in the women of the world not only rights but the right to mate, the biological right, and that at will.⁶ Charters of liberty are steps towards the realization and implementation of human rights. Magna Carta of 1215, Petition of rights of 1628, Habeas Corpus act of 1679, Bill of rights of 1689 are some of such steps taken in England.⁷

Classification of Human Rights:-

Human rights are generally classified into first, second and third generation rights. Human rights have evolved and developed as a reaction to oppressive institutions, policies and practices of the rulers. These are the first generation rights. The second and third generation rights are concerned to be responses to the economic and political oppression that was the by-product of colonialism and industrial capitalism. Karel Vasek, a former director of Human Rights and Peace Division of the UNESCO was the major proponent of the classification of rights into three generations. He stated that civil and political rights constitute the first generation rights. Social, economic and cultural rights constitute the second generation rights. The group rights, such as the right to development and environment all rights formed the third generation of rights.

The first generation rights i.e. civil and political rights provide for certain basic rights guarantees for an individual in relation to state; they involve the inviolability of the individual against any invasive action by the state. These are distinct from second generation rights, which generally require action by the state to provide certain basic needs or amenities to the individual.

In other words, Civil and political rights demand freedom from coercive action by the state against an individual; while economic, social and cultural rights necessitate certain actions and provisions by the state in order for it to fulfill its obligations.

First generation rights are included in the articles 3 to 21 of the UDHR while article 22 to 27 deals with second generation rights. Demands have come from some developing countries to focus on some group rights, as it is claimed that their societies are less individualistic than western countries. Consequently third generation rights have been developed to provide for the relation between individuals, the collectivity and the state. Third generation Rights include: the right to self-determination, right to development, right to participate in and benefit from the common heritage of mankind and the right to a healthy environment amongst many other collective rights.

Civil and political rights cannot be enjoyed in the absence of basic social economic and cultural rights. The interdependence of the rights must be acknowledged and provided for so as to ensure a better life.

In short we can say that first generation rights are related to liberty; second generation rights to equality; and third generation rights are related to fraternity.

Classification:-

I .Civil and Political Rights:

- Right to life and liberty
- Freedom of Speech and Expression etc.

II. Economic social and cultural rights

- Right to education
- Right to work
- Right to food and housing etc.

III. Group or Collective rights

- Right to development
- Environment related rights
- Solidarity rights etc.⁸

Evolution of Human Rights:-

The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout the recorded history. It seems that the concept of human rights is as old as the civilization. This is evident from the fact that almost at all stages of mankind there have been a human rights documents in one form or the other in existence. Several ancient documents and later religious and philosophies included a variety of concepts that may be considered to be human rights. Notable among such documents are the Edicts of Ashoka issued by Ashoka the Great of India between 272-231 BC and the Constitution of Medina of 622 AD, drafted by Muhammad to mark a formal agreement between all of the significant tribes and families of Yathrib (later known as Medina). However, the idea for the protection of human rights grew after the tragic experiences of the two world wars. Prior to the world war, there was not much codification done either at the national or the international levels for the protection and implementation of human rights.⁹

There is no clear cut theory regarding the origin of human right. There exist different viewpoints regarding the origin of human right. Some scholars trace the origin of human rights to religious tradition. Another argument is that human right is highly indebted to the enlightenment. The necessary condition for enlightenment, which combined to bring an end to the middle ages in Europe, includes scientific revolution, rise of mercantilism, launching of maritime exploration of the globe, the consolidation of the nation states and emergence of middle class. All these contributed in the development of human rights. It is also said that the roots of the rights can be traced in the Babylonian Law. Babylonian king Hammurabi issued a

set of laws called Hammurabi's code. In India the drama of Vedic period created the moral basis for human rights. Human rights are also based on the concept of Natural Law and Natural rights. The origin of the concept of natural law can be traced to the stoics. Stoics thinkers postulated a cosmopolitan philosophy, guided by the principle of equality of all men and universal application of natural law based on reason. In the evolution of human rights this concept of natural law played a prominent role. Cicero was the strong supporter of the stoic theory of natural law. Romans applied the stoic concept of natural law in the formation of body of legal rules for the administration of justice. They developed this body of rules on the basis of customs and by the application of reason.

The concept of Human Right was conspicuous in ancient Greece and in India. The ancient Kings in India cared for the welfare of the people. The rights of people is mainly recognized and protected by moral and spiritual dictated and the whole thing got derived from natural law which was the ruling law. In the evolution of Human Rights, the modern school of natural law, led by Hugo Grotius made great contributions. He made natural law and that natural law theory got transformed into the natural rights theory.¹⁰

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.¹¹

The human rights which we are enjoying today is developed through various stages. The important landmarks in the development of human rights are the following documents and struggles:

1. Magna Carta of 1215
2. Influence of Social Contract Theory

3. English Bill of Rights of 1689
4. American Declaration of Independence of 1776
5. American Bill of Rights of 1791
6. French Declaration of the Rights of Man of 1789
7. The Bolshevik Revolution of Russia of 1917
8. Universal Declaration of Human Rights of 1948
9. International Covenants on Human rights.

Each of these declaration and the movement referred above, have made important contributions in advancing the concept of human rights. However, being product of their own time and specific circumstances, they lack totality of concept and were narrow in their scope and application. For instance in the Greek political system, rights existed only for the 'citizens' and not for the majority who were referred to as "aliens" and "slaves". Magna Carta yield certain concessions only for the feudal lords (not for common man), though it set limitation to arbitrary rule and laid the foundation for the rule of law.

The American Declaration followed by constitutional amendments or Bill of Rights contain fairly exhaustive guarantees for the rights of man. But in practice their application was largely confined to those who constituted what was abbreviated as WASP (white, Anglo-Saxon, and protestant). Slavery continued to be a part of system; the blacks of African origin were referred to as "Negro" not as man. It was in 1864 that slavery in America was legally abolished after a bitter civil war which threatened the unity of the United States. While American and the French declarations set the seal on the basic principles of freedom of thought , human dignity and democratic government , the countries undergoing rapid industrialization has experiencing the need for more social justice and economic security. The Bolshevik Revolution in Russia (1917) went a step further. It emphasized that economic and social rights were as important as the civil and political rights.¹²

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.¹³

Influence of Social contract theory

The influence of social contract theory in the development of the Human Right was more profound in scope as well as in its impact. The doctrine of social contract was closely linked with the theory of natural law because the basis upon which the natural law theories were formulated was the same for the social contract also. These doctrines became popular during 16th and 17th century through the writings of Thomas Hobbes, John Locke, and Jean Jacques Rousseau.

Thomas Hobbes wrote his book Leviathan in 1651. According to Hobbes man entered into social contract and put the natural state to end. This contract led to the creation of common wealth or state. And the ruler was also the outcome of that contract. Since the ruler did not take part in the contract he was not bound to observe the conditions of the contract. After the contract the civil society came in to existence. According to Hobbes, the people surrounded all their power to the king through the contract, except the right of self-preservation

Hobbes was an exponent of absolute monarchy. John Locke wrote two books. They are 'Essays Concerning Human Nature' and 'Essays on civil government'. According to Locke, man entered into two contracts that are social and political. The social contract led to the creation of the society and the political contract led to the formation of the government. Locke believed that people did not transfer all their rights to the king through the contract. The king was given only the right to life, the right to property and the right to security. So the king is only trustee. The people reserve the right to dethrone the king if he fails to safeguard the security of the people. Rousseau wrote the book 'the Social Contract'. According to Rousseau, people transferred all their rights to society and put the natural order to an end. Rousseau regarded the real will of the society as the General Will. He considered General Will as sovereign. This General Will forms the basis of government. Rousseau regarded government is an institution functioning under the General Will of the people.¹⁴

The English Bill of Rights:-

The Bill of Rights was signed in England in 1689, after the Glorious Revolution of 1688. After the Glorious Revolution, the power of the king was reduced and the British parliament declared its supremacy over the crown in clear terms. Soon after the coronation of William and Mary; the new rulers after revolution, summoned the convention parliament, accepted the declaration of the

rights and passed it into law in the form of the "Bill of Rights". The English Bill of Rights declared that the king has no overriding authority. Principles like Limited monarchy and parliamentary supremacy etc. was declared during that period.

The Bill of Rights states that:-

1. The King of England should be an Anglican;

2. The king should not exercise suspending or dispensing power;
3. No standing Army should be maintained without the consent of the parliament;
4. No taxation without the consent of the parliament;
5. Parliament is the sole authority to decide who should rule England;
6. The people should have the right to send petition to the king;
7. Annual grants were to be given to the king by the parliament;
8. Arbitrary courts are to be abolished;
9. Parliament was to be freely elected and the members were to have freedom of speech. The toleration Act passed by the parliament granted religious freedom to the people.¹⁵

American Declaration of Independence:-

America was the colony of Britain. There were 13 colonies in America. These colonies were revolted against England for their independence. The main reason for the revolt was that the British government was of the view that the colonies also should share in the expenses incurred in their administration. With this view the British government started to take various regulatory measures under which it introduced certain new taxes. This resulted into militant opposition by the American people. They argued that, since they did not have their representatives in British parliament, it had no right to impose taxes upon them. The state declared independence in 1776. The Declaration of Independence was done on July 4th 1776. This famous document was drafted by Thomas Jefferson. The document says:- “We hold these truths to be self-evident, that all men are created equal that they are endowed by their creator with certain inalienable rights, that among these are life , liberty, and pursuit of happiness , that to secure these rights governments are instituted among men deriving their just powers from the consent of the governed; that whenever any form of government becomes destructives of these ends, it is the right of the people to alter or abolish it and institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to affect their safety and happiness”.

Thus Americans made their claim for independence on the basis of inalienable rights of men, Popular sovereignty and the right of revolution, but at the time of drafting the constitution in 1787 they did not include the bill of rights in the constitution. They did it in 1791 by adopting ten amendments to the constitution .These amendments are known as Bill of Rights and form part of their constitution.

US Bill of Rights:-

The first ten amendments of the American constitution constitute the American Bill of rights. James Madison proposed as many as twelve amendments in the form of a bill of rights in

1791. Ten of these were ratified by the State legislatures. These ten constitutional amendments came to be known as the Bill of Rights in America. The constitutional settlements in the US and the attached Bill of Rights provided a model for the protection of human rights. After 1791 many other amendments were also made in the constitution of America. Followings are the amendments. The first amendment provides freedom of religion, freedom of press, freedom of expression and the rights of assembly. The fourth amendments provide protection of individual against unreasonable search and seizure. The fifth establishes the rule against the self-incrimination and the right to due process of law. The thirteenth amendment, adopted after the civil war, abolishes the practice of slavery. Fifteenth amendment (1870) grants the rights to vote to racial minorities. Nineteenth amendment (1920) extended the right to vote to Women. By 26th amendment (1971) right to vote at 18 years of age and by 27th amendment (1972), the provision of equal rights and non-denial or non- abridgement of equality of rights on account of sex is included. It is worth nothing that no rights ever been removed or abridged by the Congress.

The French Declaration of the Rights of Man and of the Citizens:-

The Declaration of the Rights of Man was a product of French Revolution. The revolution reached in climax in 1789; the National Assembly swept away the ancient feudalism and serfdom. The slogan of the revolution was liberty, equality and fraternity. The French revolution gave a fatal blow to absolute monarchy and a death blow to feudalism and led to the establishment of French Republic. All the special privileges were abolished and the society came to be organized on the basis of equality. The French revolution enabled the people to enjoy different kinds of rights. The revolution established the novel ideas of Liberty equality and fraternity. The government should be not only “for the people” but also “by the people”.

On 17th august 1789, the National Assembly proclaimed the rights of man and of the citizens. The rights were formulated in 17 articles. It declared that ‘Men are born free and equal in rights.....The aim of all political association is to preserve the natural rights of man. These rights are liberty, property, security and resistance to oppression. The recognition of universality of these rights was the turning point in the evolution of human rights. The following rights that man and citizen have been recognized, among others, in the French declaration.

1. Men are born and remain free equal in rights
2. The aim of all political association is to preserve the natural right of man. These rights are liberty, property, security, and resistance to oppression
3. Sovereignty rests essentially in the nation

4. Liberty consists in the ability to do whatever does not harm another; hence the existence of the natural rights of each man has no limits except those which assure to other members of society the enjoyment of the same rights. Law can determine these limits.
5. No man can be indicted, arrested or detained except in cases determined by law.
6. All men should be presumed innocent until judged guilty.
7. No one may be disturbed for his opinion, even in religion, provided that their manifestation does not trouble public order as established by law.
8. Free communication of thought and free opinion is one of the most precious rights of the man. Every citizen may therefore speak; write and print freely own his own responsibility.
9. Taxes can be levied only with the consent of the citizens.
10. Society has the right to hold accountable every public agent of administration.
11. Property being a sacred right, no one may be deprived of it except for an obvious requirement of public necessity, certified by law and then on condition of a just compensation in advance.¹⁶

The Russian Revolution:-

The Russian was the greatest social uprising of the world since the French Revolution. Russian revolution took place in 1917. It was the first successful communist revolution of the world. The revolt was against the naked exploitation of the masses by the autocratic ruler and the wealthy feudal nobles. The revolution brought a though change in the political, social and economic life of the people and established the first proletariat government of the world. H.G.Wells concerned it as “the greatest event after the advent of Islam”. It is true that the French Declaration proclaiming liberty, equality and fraternity for all. But liberty and equality were soon proving to be empty slogans for poor peasants and factory workers. Hence, beginning the mid-nineteenth century, the demand for social security and social justice, in addition to civil and political rights, appeared in the forefront of socialist movement. The Bolshevik Revolution in Russia (1917) went a step further. It emphasized that economic and social rights were as important as the civil and political rights. Many economic and social rights had been included in the soviet constitution. It is gratifying to note that the socialist revolution in Russia introduced socio-economic dimensions to the concept of rights, which were neglected in the events and documents of English, American and French revolutions. While the three revolutions emphasized the first generation (civil and political) rights, the October Revolution of Russia popularized socio-economic rights; such as right to work, social security, protection of the family, right to adequate standard of living, right to education, health and right to join trade unions. These are second generation rights or positive rights.

Adoption of Universal Declaration of Human Rights:-

The Universal Declaration of Human Rights(UDHR) was adopted by the General Assembly of the United Nation on 10th December 1948.The declaration is not a legally binding document; It is an ideal for all mankind. In the words of Eleanor Roosevelt, it proclaims “a common standard of achievement for all people and all nations”. In its final form, it comprises of alert of civil, political, economic, social and cultural rights to which all persons are entitled. Universal Declaration is a declaration of principles directed to the peoples of the world. This has been considered as one of the greatest achievements of the UN. It has been maintained that “the universal declaration of human rights has had a significant influence on the development of standards that states are not only expected but also has legal commitment to be respected”.

International Covenants on Human Rights:-

The meet the demand for a legally binding document for the protection of the human rights, two international covenants were approved by the General Assembly on 16th December1966. These are: - 1. International Covenant on Civil and Political Rights 2. International Covenant on Economic Social and Cultural Rights. What is more important about the two UN covenants is that they contain “international mechanism” to monitor and observe that the obligation of human rights is observed by states parties to the covenants. Two supervisory bodies – that Human Right Committee under ICCPR and committee on Economic, social and cultural Rights under ICESER consisting of 18 human rights experts are created to help States Parties to the covenants in fulfilling these obligations.¹⁷

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