

## EVOLUTION AND INSTITUTIONAL CRYSTALLIZATION OF HUMAN RIGHTS AN INTERNATIONAL PERSPECTIVE

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### WHAT ARE HUMAN RIGHTS?

Human rights are those minimal rights that individuals need to have against the state or other public authority by nature of their being members of the human family irrespective of any other consideration. According to Dr. S.K. Kapoor human rights are those rights which are inherent in our nature and without which we cannot live as human beings. He further opines that these valuable 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 physical, spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection<sup>i</sup>.

“Human rights are some times called fundamental rights or basic rights or natural rights. As fundamental or basic rights they are the rights which cannot, rather must not be taken away by any legislative 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. They may also be described as common rights for they are rights which all men and women in the world share, just as the common law in England, for example was the body or rules and customs, which unlike local customs governed the whole country<sup>ii</sup>. They are basic and inalienable in nature and belong to the Homo sapiens because of their very existence and become operative with their birth. In social sense being birth rights they are inherent in all individuals irrespective of their caste, creed, religion, sex, colour, language, domicile and

nationality. These rights are essential for all individuals, are consonant with their freedom, dignity and moral and spiritual welfare. They are also referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights. They aid in developing human personality to the fullest extent

It is difficult to give a precise definition of the term 'human rights' but we may say that these are the rights which all people have by nature of their being humans. There are certain deeds which should never be done, certain freedoms which never should be invaded, somethings which are sacrosanct because they affect the human dignity. Human rights are exemption from the operation of arbitrary power and they are to be defended if peace and prosperity is to be achieved. People have become aware of their rights and are bent upon protecting and sustaining them in the benefit of man and welfare of mankind.

### EVOLUTION OF CONCEPT OF HUMAN RIGHTS

The roots for the protection of the rights of man may be traced as far back as in the Babylonian laws specially the Hammurabi Codes<sup>iii</sup> which established fair wages, offered protection to property and required charges to be proved at trial. A few Greek and Roman philosophers recognized the idea of natural rights and stressed that others take cognizance of them in practice. Roman jurist Ulpian stated that according to the law of nature all men are born free and equal. Cicero believed that there should be universal human rights law that would

transcend customary and civil laws. Greek and Roman laws both gave equal freedom of speech, equality before law, right to vote, right to be elected to public office, right to trade and the right of access to justice to their citizens. Greco-Roman natural law doctrines of stoicism held that human conduct should be judged according to law of nature. Stoic philosophers formulated. The theory of natural law after the break down of Greek city states.<sup>iv</sup> Stoicism is a school of Hellenistic philosophy founded by Zeno of Citium in Athens in the early 3<sup>rd</sup> century B.C. Stoicism is a unique philosophy of personal ethics to be followed by humans naturally in the natural world. The path to happiness for humans is found in accepting the moment as it presents itself by not allowing oneself to be controlled by the desire for pleasure or fear of pain by using one's mind to understand the world and to do one's part in nature's plan, and via a spirit and deed of harmony treat others fairly and justly. The Stoics taught and cajoled people that "virtue is the only good" for them and health, wealth and pleasure were only materials for virtue to act upon.<sup>v</sup>

The Magna Carta of England was by King John to the barons in response to heavy taxation burden on them. The theme of this bill of rights was protection against arbitrary act of king and that the power of the king was not absolute. The year 1689 thus witnessed the documentary authority for the rule of law in England. Following suit the French Declaration of Rights of Man and the Citizen of 1789 stipulated that men are born free and equal in rights. Contagiously many other European countries were apt in including provisions for protection and preservation of human rights.

The American war of independence primarily aimed at overthrowing the authority of the tyrannical government and it fruitfully ended in the Declaration of Independence proclaimed on July 4, 1776. It was not only an attack on the divine rights of king to rule but also against a government which failed to reflect the will of the people. The American revolution was affected, by the Social Contract Doctrine, the British Bill of Rights of 1689 and also the growing importance of notion of natural rights.

Human Rights during Medieval period were marred by the outbreak of a series of wars for unholding traditional religious principles. Church dominated the political affairs of country. Medieval Europe was a helpless witness to the gross devaluation of common people due to the strong hold of the ill institutions namely feudalism, slavery and bonded labour. Violation of human rights during the middle ages in France and Europe paved the way for a series of revolutions. Upendra Baxi has rightfully opined "Human rights discourse premised on the view that violence is antithetical to any model of rights rarely concedes the historical truth that violence can create rights.

Certainly both the violence of the oppressed and the violence of the oppressor play a crucial role in the creation, promotion and protection of human rights.<sup>vi</sup> Outbreak of French Revolution in 1789 spread the principles of liberty, equality and fraternity and also paved the way for two later revolutions. The Russian Revolution of 1917 focused on economic and social rights. Thus emergence of humanitarian ideas during the 18<sup>th</sup> and 19<sup>th</sup> centuries in Europe and others countries contributed to a clearer understanding of human rights. Slavery in Europe and slave trade in Africa had become burning issues at the beginning of 19<sup>th</sup> century and movements were undertaken to combat and suppress this ill institution. In India humanitarian ideas became popular from the beginning of 19<sup>th</sup> century. Abolition of sati, slavery and female infanticide, introduction of widow remarriage by legislation and prohibition of child marriages was the beginning of humanitarian legislation.

## THE IMPERATIVE FOR PROTECTION OF HUMAN RIGHTS BY INTERNATIONAL LAW

The idea that human rights could be protected by international law in addition to municipal law developed slowly because of the obstacle in its path of progress, in the doctrine of state sovereignty prevailing in the 19<sup>th</sup> and early 20<sup>th</sup> century. Human

rights questions were regarded as matters entirely within each state's personal domestic jurisdiction and international law had no say in it. It was considered as an attack upon the concept of state sovereignty. In 1929 The Institute of International law<sup>vii</sup> laid down the six duties of the state-

1. To recognize the right of every individual to life liberty and property and to accord to all within its territory full and entire protection of their rights without distinction as to nationality, sex, race language or religion.
2. To recognize the right of every individual to the free practice of every faith, religion or belief.
3. To recognize the right of every individual to free use of language of his choice and to the teachings of such language.
4. To recognize that no motive based directly or indirectly on distinction of sex, race, language or religion empowers states to refuse to any of their national's private and public rights
5. To recognize that the equality contemplated is not to be nominal but effective.
6. To recognize that except for motive based upon its general legislation no state shall have right to withdraw its nationality from those whom for reasons of sex, race, language or religion it should not deprive of the guarantee contemplated in this proclamation.

The proclamation may be regarded is the first attempt towards the universalization of human rights. Not imposing any obligation on the states though it layed down for all nations the minimum standard of conduct towards all men including their own nationals without distortion of any superfluous consideration.<sup>viii</sup> The change come in 1940's when during World War II shocking crimes were committed against humanity and fundamental human rights laid crushed under the tyrannical feats

of the Nazis. The concept of unrestricted sovereignty was challenged and gradually the consensus evolved that for future good of mankind the doctrine should be subject to certain limitations. Violation of human rights was considered as a source of international conflict and protection of human rights essential for international peace. In 1941 President Roosevelt rightfully reiterated this new found opinion by proclaiming the 4 freedoms which were freedom of speech, freedom of religion, freedom from want and freedom from fear.

Peace was essential to be established worldwide for human survival with dignity and for this efforts were being made for creation of an international organization even during the World War II. After a number of conferences and meetings 'United Nations' an international organization was finally established in 1945. President Franklin. D Roosevelt of US and Prime Minister Winston Churchill of UK issued a joint declaration in a document known as the 'Atlantic Charter' which spelled out the hope that men in all lands may live their lives devoid of fear and want L.H. Woolsey said, "We have therefore in the Atlantic Charter a statement of principles and in the declaration a further statement of human freedoms and rights, to both of which 30 nations are committed for post war guidance and achievements"<sup>ix</sup>. The term 'human rights' was for the first time used in the declaration of United Nations signed on Jan 1, 1942 at Washington calling out to the world to "preserve human rights and justice in our own land as well as other lands"<sup>x</sup>. A Declaration was signed in 1943 at the Moscow Conference the theme being that individual Germans be held responsible for their gross violation of rules of international law. The Nuremberg Charter strongly raised the issue of individual accountability for war crimes and crimes against humanity. Dumbarton Oaks proposals also contained reference to the promotion of human rights though only a brief one. Those proposals constituted the promotion of human rights as one of the activities to be performed by the proposed general Assembly and under its authority the

ECOSOC. The idea for the protection for human rights and fundamental freedoms was conceived in the Atlantic Charter (1941) and Declaration of United Nations (1942). When the founder of UN met at San Francisco conference to draft the charter of United Nations many countries wanted the discussion on the international bill of human right at that venue but the latter did not specifically find its place in the UN Charter though there were a number of provisions of general nature which were too vague for the promotion and protection of human rights and fundamental freedoms. After the United Nations came into force and the ECOSOC too was formed that purpose of United Nation with regards to the promotion and observance of human rights could only be fulfilled if provision was made for an international bill of rights and for its implementation. Finally in 1947 the Commission on Human Rights appointed a drafting committee to prepare the draft of the bill of rights. The commission prepared three documents consisting of a declaration of general principles on human rights, a draft convention (convention on specific rights) and a memorandum on the question of implementation. Three simultaneous working groups prepared documents at three above topics. One of the working groups prepared a draft covenant comprising of twenty seven articles which was redrafted by the drafting committee at its second session in 1948. But the adoption of this proposed covenant on human right got delayed due to some member states of the UN<sup>xi</sup> putting forward a proposal for the inclusion of articles on economic, social and cultural rights.<sup>xii</sup> The commission decided to limit the proposed covenant to civil rights and freedoms only and started preparing another covenant on economic, social and cultural rights. Thereafter the General Assembly approved this proposal and recommended the inclusion of the economic social and cultural rights in the International Covenant on Human Rights.<sup>xiii</sup> The preparation of the drafts of the two covenants was completed by the commission in 1954 and General Assembly finally and unanimously adopted the two international covenants namely the International Covenant on Civil and Political Rights and

International Covenant on Economic, Social and Cultural Rights on Dec 16, 1966.<sup>xiv</sup> The General Assembly also adopted an Optional Protocol to the International Covenant on Civil and Political Right<sup>xv</sup>. Thus the International Bill of Human Rights (Magne Carta of Human Rights) comprised of the following-

1. The Universal Declaration of Human Rights 1948.
2. The International Covenant on Civil and Political Rights 1966.
3. The International Covenant on Economic Social and Cultural Rights 1966.
4. The Optional Protocol to the International Covenant on Civil and Political Rights 1966

The Universal Declaration of Human Rights consists of 30 articles besides a preamble which proclaims the declaration as a common standard of achievement of all people and all nations. It enumerates the basic principles of human rights dealing not only with civil and political rights but social and economic right as well. Likewise the two covenants are embedded with the relevant jewels of valuable rights which are the lifeblood of mankind. As regards the legal effect of the Universal Declaration we can say that it sets for the world a common standard of achievement. The rights mentioned therein are fundamental in nature although legally it is supposed to be not binding on the states. It is the first major achievement of United Nations in the field of human rights because it recognizes the inherent dignity and inalienable rights of all people, of all nations in disregard of all superfluous considerations. The declaration has made human rights universal and has presented the ideals of human rights and freedoms to be realized for their progressive crystallization. The declaration provides for development of customary law and is the cornerstone of all UN activities related to human rights. It transforms the substantive norms of human rights from national to international level and wields a profound and strong influence on the minds of men. Articles of the declaration have often been quoted in the resolution of the General Assembly. It provides a foundation upon which human rights

treaties rest and also finds place in preamble of many conventions related to human rights.

## THE INTERNATIONAL INSTITUTIONALIZATION OF HUMAN RIGHTS

The realization that human life can only be worth its existence when rights inherent to it are protected, preserved and cherished brought forth in the international horizon of mankind several treaties, conventions, covenants, suggestions, recommendations and deliberations between human rights stake holders be they nations or human beings. Starting with the ill experiences of the second world war the glaring issue of the protection of victims of war came into front, the wartime prisoners civilian and military both also had basic rights and dignity was defined boldly by the Geneva Conventions consisting of four treaties and their additional protocols that establish the standards of international law for humanitarian treatment in war. They extensively define the basic rights of wartime prisoners, establish protection for the wounded and sick and establish protections for the civilians in and around war zone. These conventions are not to be confused with the two Hague Conventions (1899, 1907) which address warfare proper and also the bio-chemical warfare Geneva Protocol of 1925 which prohibits the use of asphyxiating, poisonous or other gases and of bacteriological methods of warfare<sup>xvi</sup>. The Convention on the Prevention and Punishment of the Crime of Genocide was adopted by the United Nations General Assembly on December 1948 and it entered into force on 12<sup>th</sup> January 1951. According to D.J. Harris this convention to a large extent reflects customary international law<sup>xvii</sup>. The term 'genocide' was coined by Lemkin, a private individual and a lawyer who campaigned for several years for the realization of this human right<sup>xviii</sup>. Art 2 of the convention defines genocide and Art 3 defines the crime that can be punished under the convention. Efforts have been and are still being made to

formulate universal standards, declarations and conventions to ensure prohibition against torture or cruel or inhuman treatment or punishment. Art 14 of the convention defines the term torture. Crimes of genocide as well as apartheid may be included within its meaning in addition to a number of other situations which are included within the meaning of torture or other cruel, inhuman or degrading treatment or punishment.

The Slavery Convention was signed at Geneva on 25 September, 1926 aiming at the abolition of slavery and slave trade but it did not prove to be adequate for ending these ill practices. Hence the adoption of the supplementary convention on the abolition of slavery, the slave trade and the institution and practices similar to slavery. The preamble of the 1956 Convention clearly states that since "the slave trade and institution and practices similar to slavery trade have yet not been eliminated in all parts of the world" and hence the decision that the convention of 1926, which remains operative should now be augmented by the inclusion of a supplementary convention designed to intensify national as well as international efforts towards the abolition of slavery, the slave trade and institutions and practices similar to slavery<sup>xix</sup>. The General Conference of International Labour Organization adopted the international convention concerning the abolition of forced labour on 25<sup>th</sup> June 1957 followed soon by the General Assembly in 1963 adopting the UN declaration on the Elimination of All Forms of Racial Discrimination. It crystallized into a convention in 1966. International Convention on the Suppression and Punishment of the crime of Apartheid (1993) prohibited and punished all inhuman acts committed for the purpose of establishing and maintaining domination by one social group of persons over any other social group of persons and systematically oppressing them. The International Convention against Taking of Hostages was adopted by General Assembly in 1976 due to the act of taking of hostages endangering human lives and violating human dignity. A very important convention is the

1984 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment which defines torture. Article 1 and art 2 spells out the obligations of state parties to take effective, legislative, administrative judicial or other measures to prevent acts of torture in any territory under its jurisdiction.

## THE REALIZATION OF HUMAN RIGHTS TO THE FULLEST IN THE FORM OF INTERNATIONAL CONVENTIONS RELATING TO VULNERABLE GROUPS

"Justice is the first virtue of social institutions as truth is of systems of thought." A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well arranged must be reformed or abolished if they are unjust<sup>xx</sup>. To the above may be added that justice is real and effective only when it manifests itself as a succor for the most vulnerable and marginalized either in the form of social justice or legal justice or both simultaneously. The United Nations has brought forth a plethora of instruments for the protection, promotion and preservation of the rights of the most marginalized and vulnerable groups.

1. The Convention on Status of Refugees 1951 is based on two principles first no discrimination as far as possible between nationals and refugees and second no discrimination based on race, religion or country or origin amongst refugees. Until 1967 the convention applied only to persons who had become refugees before January 1, 1951 but under its protocol adopted in 1967 new groups of refugees are afforded the same protection. The Convention on the Political Rights of Women was adopted in 1952 with the aim to equalise the status of men and women in the enjoyment and exercise of political rights. The Convention Relating to the Stateless Persons (1954) as well as the Convention on the Reduction of Statelessness

(1961) aim to reduce the number of stateless persons under international law. An International Convention of 1990 aims to protect the rights of all migrant workers and members of their families.

The United Nations Convention on the Rights of the Child is the most widely ratified convention in history.<sup>xxi</sup> The convention sets out the rights of children upto 18 years and simultaneously the responsibilities of government to ensure those rights. Every child of the world regardless of gender, religion or ethnicity has the right to survive, grow, participate and meet their fullest potential. The convention includes the responsibilities of parents, governments and children themselves to ensure the rights of children are fulfilled<sup>xxii</sup>

As regards rights of women a number of international instruments focus entirely or in part on the scourge of discrimination against women. The most important is the Convention on the Elimination of All Forms of Discrimination against Woman (CEDAW) adopted by the UN General Assembly in 1979. But even before this there have been major achievements in the field of women rights from the time of adoption of UN Charter of 1945 which provided for rights of men and woman. The relevant conventions are-

1. Convention against Traffic of Persons and Exploitation of the Prostitution of Others.
2. Convention concerning Equal Remuneration for Work of Equal Value by the ILO in 1951.
3. Declaration on Elimination of Violence against Women (1993).
4. Convention on the Nationality of Married Women (1957).

"Millions of women throughout the world live in conditions of abject deprivation of and attack against, their fundamental human rights for no other reasons than that they are women. Abuses against women are relentless, systematic and widely tolerated , if not explicitly condoned. Violence and discrimination against women are global social epidemics not with standing the very real progress of



the international women's human rights movement in identifying raising awareness about, and challenging impunity for women human rights violation.<sup>xxiii</sup> United Nations is committed to the principle of equality of men and women, meaning equality in their dignity and worth as human beings as well as equality in their rights, opportunities and responsibilities. It works for the advancement of women. The entire United Nations System has dedicated itself to ensuring the universal recognition in law, of equality of rights between men and women and to exploring ways to give women in fact, equal opportunities with men to realize their human rights and fundamental freedom. - United Nations<sup>xxiv</sup>

## CONCLUSION

The conception, birth and evolution of human rights is nothing but the trajectory of the realization on the part of mortals of the value laden virtues of empathy, compassion and positive growth. The brotherhood of human race and human beings rests on their inter dependence which results in none other than happiness and satisfaction that enriches human life and makes it worth while. To sustain the

valuable human rights the need is to be sensitive and take a stand against brutal and dehumanising violations of human rights whenever and wherever they occur. Human right awareness and education is imperative in the home, classroom and out in the workplace. Human rights have become very convincing in the 18<sup>th</sup> century. Lynn Hunt asks "Human Rights have become so ubiquitous in the present time that they seem to require an equally capacious history. Greek ideas about the individual person, Roman notions of law and right, Christian doctrine of the soul--- the risk is that the history of human rights becomes the history of western civilization or now sometime, even the history of the entire world. Do not ancient Babylon, Hinduism Buddhism and Islam all make their contributions too? How do we account for the sudden crystallization of human right claims at the end of the 18<sup>th</sup> century?"<sup>xxv</sup> The answer is, since human rights are natural, equal and universal and all humans in the world possess them equally, all have contributed equally towards its evolution and preservation. Human rights evolution is thus self evidentiary and not confined to any one premises.

<sup>i</sup> S.K Kapoor, Human rights under international law and Indian law (Central law Agency, Allahabad, 2011) p1

<sup>ii</sup> J.E.S fawcett, The law of Nations ( aliene lane, The Penguin Press, London, 1968) p 151.

<sup>iii</sup> The Code of Hammurabi is a well preserved Babylonian code of law of ancient Mesopotamia, dated back to about 1754 BC. The 6th Babylonian king Hammurabi enacted it

<sup>iv</sup> Gaius Ezeifofo, Protection of Human Rights under the law (Butterworth, London,1964) p 3

<sup>v</sup> [www.enmwikipedia.org](http://www.enmwikipedia.org)

<sup>vi</sup> Upendra Bakshi-From Human Rights to the Right to be Human: Some Heresies, p19. (www. [researchgate.net](http://researchgate.net)).

<sup>vii</sup> A private organization whose members were elected from the authorities on international law in Europe, America and Asia.

<sup>viii</sup> Philip Marshall Brown (1930) 24 AJIL, p127.

<sup>ix</sup> L.H woolsey ( 1942) 36 AJIL, p626

<sup>x</sup> <http://en.m.wikipedia.org>

<sup>xi</sup> Namely Australia, Soviet Union and Yugoslavia.

<sup>xii</sup> Dr S.K. Kapoor( Human Rights, Central law agency, Allahabad, 2011) p 42

<sup>xiii</sup> . See General Assembly Assemblyresolution 421 (v) Dec 4 1950

<sup>xiv</sup> See General Assembly resolution 2200 A xxl) December 1966

<sup>xv</sup> In December 1989 the General Assembly adopted yet another protocol that is Second Optional Protocol to the International Covenant on Civil and Political Rights on December 15, 1989

<sup>xvi</sup> [https:// en.m. wikipedia.org](https://en.m.wikipedia.org)

<sup>xvii</sup> D.J Harris, Cases and Materials on International law ( London, Sweet and Maxwell, 1973) p 549

<sup>xviii</sup> Auron, Yair, *The Banality of Denial*, (Transaction Publishers, 2004 ), 9

<sup>xx</sup> Dr. S.K Kapoor (*Human Rights*, Central law Agency: Allahabad, 2011) p 126

<sup>xxi</sup> John Rawls, *A Theory of Justice* (Universal law Publishing Company Private Limited, New Delhi, 2013) p 3

<sup>xxii</sup> www. [unicef.org](http://unicef.org). nz.

<sup>xxiii</sup> . Ibid. Indrani Sengupta, *Human Rights of Minority and Women's* ( Isha Books, New Delhi ,2005) Preface (vii).

<sup>xxiv</sup> United Nations, New York, 1984, p 148

<sup>xxv</sup> Hunt, Lynn, Avery, *Inventing Human Rights* (ww .Norton and Company Inc, New York, 2007), p 20