



## RESTRUCTURING THE PHILOSOPHY OF HUMAN RIGHTS

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### ABSTRACT

*'Human Rights' is not a novel concept. It started with the very existence of the human beings. In order to claim these rights no other qualification is required except to be a human being. Since ancient times one or the other philosophy has conceptualised and structured the idea of human rights. Almost all of these philosophies were influenced by the circumstances of their time. Some philosophers have given the idea in Natural Rights, some has found it as inalienable rights of man; while other have rejected the very idea of any such rights. So in order to find out what is the nature of these rights and to whom they belong, the concept needs a thorough analysis. In this paper, different 'Rights Models' have been analysed to find the answers of the present day problems regarding human rights.*

**KEYWORDS:** *Human Rights, Justice.*

### INTRODUCTION

Every day the controversies as to the application of human rights can be seen without any solution. One such controversy is the enforcement of human rights for the people who are accused of grave human rights violations. In this category mainly are the accused of terrorist attacks. To find out the answer whether such offenders are eligible to claim human rights or not, it is necessary to understand the concept of 'Human Rights' from its very inception in detail. Whether human rights are to be viewed as divine, moral, or legal entitlements; whether they are to be validated by intuition, custom, social contract theory, principles of distributive justice, or as pre-requisites for happiness; whether they are to be understood as irrevocable or partially revocable; whether they are to be broad or limited in number and content. These are the issues related to the concept of human rights; that will remain so as long as there exist contending approaches to public order and scarcities among resources.

The confusion of the terms natural rights, rights of a man and human rights

There are subtle differences however, between each of the major formulations, human rights, natural rights and the rights of man, and each has advantages and disadvantages.

Natural rights stress grounding of rights in human nature. It also refers to a tradition of thought which includes Locke, as in the Lockean traditions concentration on civil and political rights emphasizes upon vague and confusing reference to natural law.

The phrase '*rights of man*' suggests man as the source of rights. To the extent that man is viewed as not merely natural, but rational and moral, this suggests a more complicated, and probably more illuminating, source for these rights. However, this phrase, particularly in English, has deep rooted ideological connotations.

'*Human rights*' seems to avoid the disadvantages of the other two terms. Like the rights of man, it suggests a subtle and particularly interesting derivation of rights from the complex moral notion of humanity; human nature as the source of the rights. In addition, human rights may misleadingly suggest that all the rights held by human beings are human rights. Instead, human rights are a particular type of rights held by human beings, the rights they hold simply by their nature as human persons. Furthermore, human rights may misleadingly suggest that one is being humane, charitable or beneficent in establishing or recognizing such rights, when in fact one is giving to right holders that to which they are entitled. However, 'human rights' is probably the least flawed of the three terms.

Controversy between natural law and positive law as to the notion of human rights

The philosophies of natural law and positive law in respect of human rights also, are very different. Some jurists have, no doubt, tried to reconcile these to aspects on the issue of human rights.

In presenting this hypothesis the warning of Roscoe Pound may be noted:

“We have seen that no theory [of law and morals] has been able to maintain itself, so that after twenty-four hundred years of philosophical and juristic discussion we are substantially where we began.”

But it is also true that at one place Pound suggests that “In general, law cannot depart far from ethical custom nor lag far behind it. For law does not enforce itself. Its machinery must be set in motion and kept in motion and guided in its motion by individual human beings; and there must be something more than the abstract content of the legal precept to move these human beings to act and to direct their action.”

Positivist approaches to law and rights reflect Thomas Hobbes's vision of the world. In this vision the state of nature is a state of war where every man is enemy to every man. Hobbes claims that,

“To this war of every man against every man ... [t]he notions of Right and Wrong, Justice and Injustice have there no place. Where there is no common Power, there is no Law: where no Law, no Injustice. Power creates law and law creates rights”.

John Austin reasoned that “Laws proper, or properly so called, are commands that imply sanction, duty, and superiority”.

Thomas Aquinas claimed that we share with all substances an inclination to do what is required for self preservation. As we are naturally rational, rationality itself plays an integral role in the process.

But this concept of natural law was discredited by the neo-Darwinian theory of evolution. The divine and natural bases for law have been severed. So it is necessary to discover a concept of natural law which is compatible with modern science and which would provide universal and objective foundations for positive law. The positivist approach shares in a vision of humanity that, in its extreme form, can be traced to Hobbes. The Hobbesian image has influenced the Western concepts of society and has been reinforced by classical and neo-classical Western economics; that is, the assumption that the human is, by nature, an egoistic, competitive creature. In contrast to this pessimistic picture of the human condition is the more optimistic view of natural law theorists, and especially their emphasis on human characteristics such as cooperation and altruism. The major basis for this optimism is a belief in the divine, but they see positive characteristics throughout nature. Hobbes' contemporary, Hugo Grotius, often called the father of international law, provides the contrast. For Grotius, the maintenance of social order is the source of law. He says that:

“The human has an impelling desire for . . . the social life . . . peaceful and organized. ; this ‘sociableness’, We are not impelled by nature to seek only our own good”.

Hans Kelsen, who argues against the concept of natural law, claims that:

“There can be no moral basis for law since . . . no element common to the contents of the various moral orders is detectable,”

As demonstrated by the ill-conceived US invasion of Iraq, at stake is the whole structure of international relations and law: are we to be governed by universal principles of morality, or pursue the neo-conservative road to a new imperial system? The conflict between Pope John Paul II and the Bush Administration arose precisely because of the Vatican's attempt to defend universal moral principles, including social justice and human rights, as the basis for a renewed system of international law and governance.

Bentham, one of the founders of Utilitarianism and a nonbeliever, was no less scornful. He wrote

“Rights [is] the child of law; from real law come real rights; but from imaginary laws, from ‘law of nature,’ come imaginary rights.... Natural rights is simple nonsense; natural and imprescriptible rights (an American phrase), rhetorical nonsense, nonsense upon stilts”.

But it was not until the rise and fall of Nazi Germany that the idea of rights or human rights came truly into its own. The laws authorising the dispossession and extermination of Jews and other minorities, the laws permitting arbitrary police search and seizure, the laws condoning imprisonment, torture, and execution without public trial-these and similar obscenities brought home the realisation that law and morality, if they are to be deserving of the name, cannot be grounded in any purely Utilitarian, Idealist, or other consequential doctrine.

### **KANT’S MODEL OF RIGHTS**

Kant, who is considered a strong defender of natural rights expresses his view that it is people’s capacity for rational and autonomous action that makes them worthy of respect:

“For nothing has worth except what the law assigns it. Now the legislation itself which assigns the worth of everything must for that very reason possess dignity, that is an unconditional and incomparable worth; and the word respect alone supplies a becoming expression for the esteem which a rational being must have for it. Autonomy then is the basis of the dignity of human and every rational nature.”

So he says that the legislation as well as the claim, both should be rational.

### **RAWLS MODEL OF RIGHTS**

Since Rawlsian principles of social justice are in large measure contextual, the definition of human rights will similarly alter with context under a social justice model. It is, however, a serious drawback, for; it renders human rights no longer universal, in clear contradiction to the fundamental principles underlying international human rights. The United Nations adopted the Universal Declaration of Human Rights, in which human rights are clearly and unambiguously conceptualised as being inherent to humans and not as the product of social cooperation. Article 1 begins

“All human beings are born free and equal in dignity and rights”.

Article 2 is even more unambiguous. It says:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status [emphasis added]”.

The International Human Rights Covenants are equally explicit in claiming that

“These rights derive from the inherent dignity of the human person, which is universal”.

The social justice model would even seem to dissolve the basic distinction between human rights and numerous other (non-rights based) goals, principles, and values. Only those interests essential to one's standing as a moral person, one's status as a fully human being, are human rights. The approach lies somewhere between that of the early 'state of nature' theorists and that of John Rawls.

### **HOBBS MODEL**

The Hobbesian view gives us this sequence:

War - Fear - Alien Power - Law - Rights

So according to Hobbes it is the fear of war and insecurity from an alien power that gives rise to the social contract; which consequently gives birth to laws; and out of which are originated rights. This state is universal. But it is also true that the exercise and the enforcement of rights may differ in one society from the other. So the human rights are universal but the degree of their exercise and enforcement may vary.

### **VASAK'S MODEL**

This model presents a simplified expression of an extremely complex historical record. He has discussed three stages of the development of human rights.

**The First Generation:** The first generation of civil and political rights derives primarily from the 17<sup>th</sup> and 18<sup>th</sup> century reformist theories, which are associated with the English, American, and French revolutions defining human rights more in negative (freedoms from) than positive (rights to) terms; it favours the abstention rather than the intervention of government in the quest for human rights. Belonging to this first generation, thus, are such claimed rights as are set forth in Articles 2-21 of the Universal Declaration of Human Rights.

**The Second Generation:** The second generation of economic, social, and cultural rights finds its origins primarily in the socialist tradition that was foreshadowed among the Saint-Simonies of early 19<sup>th</sup> century France and variously promoted by revolutionary struggles and welfare movements ever since. Illustrative are the claimed rights set forth in Articles 22-27 of the Universal Declaration of Human Rights.

**The Third Generation:** Finally, the third generation of solidarity rights, while drawing upon, interlinking, and reconceptualising value demands associated with the two earlier generations of rights, are best understood as a product, even though one still in formation, of both the rise and the decline of the nation-state in the last half of the 20th century. For example the one incorporated in Article 28 of the Universal Declaration of Human Rights, which proclaims that: "Everyone is entitled to a social and international order in which the rights set forth in this Declaration can be fully realized."

So some of the features that come out of various views are:

Firstly, they are rights, not mere goals or aspirations.

Second, human rights are universal, moral rights independent of the recognition of these rights in the legal system of the country in which a person resides.

Third, these rights are alleged to be important enough to prevail in conflicts with contrary national norms and goals and to justify international action on their behalf.

Finally, these rights are concerned with political, social, and economic abuses; with the most severe problems that arise in people's relationships with government and society.

## CONCLUSION

The above discussion indicates that the human rights are, no doubt, available to all the human beings in form of positive assertions. But the person who demands these rights must follow at least the basic system of humanity himself. So, a re-look by intelligentsia, on the concept of human rights, is necessitated in order to find out some more apposite answers to the problem.

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