



NATURE OF HUMAN RIGHTS : CONCEPT AND ISSUES

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ABSTRACT The idea of rights provides for an essential tool of analysis of the relations between individual and the state. The state claims authority over individual, but when the state is viewed as an instrument of society, it is essential that authority of the state is viewed as an instrument of society, it is essential that authority of the state is viewed as an instrument of society, it is essential that authority of the state is made to depend on the function it performs.

KEYWORDS :

The expression "human rights is a recent origin. The to infect has its origin back in the ancient Greece and Rome. Human of his status as a human being. While civil, political and social-economy rights are dependent on an individual's status as a citizen of particular state, his human rights are not determined by this condition. Again, where individual's civil, political, and economic rights are exhausted, he can still hope to get some relief under the umbrella of human rights. For instance, a foreigner, a refugee, a prisoner-of-war or a proclaimed offender may have been left without ordinary rights, yet the beneficent hand of human rights will not be withdrawn from rights are those rights to which an individual is entitled by virtue of his head.

Human Rights constitute the very source of all rights of human beings. They embody the scheme of ideal rights. They provide of moral foundation of any system of rights. In a way they are akin to the concept of justice. As the idea of justice determines the principles on which law should be based, so the idea of human rights sets the standards on which all other rights should be based. Moreover, when ordinary rights are reinterpreted in the light of human rights, they enter the ever-expanding domain of human welfare. For instance, the right of life in this context may be interpreted to include the right to live on uncontaminated land, to breathe in clean air and to consume clean water, and government may be held responsible to satisfy these conditions. Nevertheless, human rights can only be realized as rights. In other words, human rights, like any other rights, have to be enforced by a state or an international tribunal who should be capable of enforcing them. In order to understand the true character of human rights it would be worthwhile to describe the nature of rights as such.

Meaning of Rights :

The idea of rights provides for an essential tool of analysis of the relations between individual and the state. The state claims authority over individual, but when the state is viewed as an instrument of society, it is essential that authority of the state is viewed as an instrument of society, it is essential that authority of the state is viewed as an instrument of society, it is essential that authority of the state is made to depend on the function it performs. In other words, when the state is regarded as a means, and the individual as the end the state cannot be armed with absolute authority over individual must claim rights. Individual owes allegiance to the state and obeys its commands because the state serves his interests. What does individual claim from the state? An answer to this question will elucidate the concept of rights. Rights essentially belong to sphere of conflicting claims between individual and the state. Any political theory, which holds that an individual cannot have rights 'against the state', is not a theory of rights. It is important to note that the benefits, which flow automatically from the existence of the state, do not constitute rights. Rights come into the picture only when authority of the state is sought to be limited, or when individuals and their groups demand a positive role of the state. Thus, Thomas Hobbes, J.J. Rousseau and G.W.F. Hegel may have paid rich tributes to the state, in their own ways, for creating congenial conditions for the happiness of man, but they have failed to evolve any concept of rights. Absence of rights makes the happiness of individuals depend on the chance of benevolence of the powers-that-be. If there are no rights to curb the authority of the government and to prescribe functions of the government, the state assumes unbridled

power. It may soon degenerate into absolutism, authoritarianism, despotism and tyranny. Glorification of the state, Without an in-built mechanism to curb authority of the state means complete subordination of the individual to the ruler or the ruling groups thereby opening the floodgates of corruption, oppression, exploitation and injustice.

The concept of rights or 'human rights', therefore, originates from the voice of protest against oppression perpetrated by the dominant groups in society. Rights are meant to safeguard the individual from the irresponsible and arbitrary use of power by the ruling class. In a nutshell, R.M. MacIver, in his preface to "Great Expressions of Human Rights" (1951) has observed that "the cry for human rights now becomes more than exhortation or protest. It becomes the precise demand for the legal and constitutional embodiment of specific claims to liberties, and then to opportunities". In short, Rights consist in claims of individuals which seek to restrict arbitrary power of the state and which are required to be secured through legal and constitutional mechanisms. In addition these may include some benefits which the state may extend to its citizens to improve the quality of their life"

Negative and Positive Rights:

With the spread of modern consciousness, the concept of rights has been modified in two important directions: it is now admitted that: a) the advantages of rights should not be confined to a tiny class which is placed in a privileged position by virtue of its money and manipulative power; and that b) rights should not be confined to delimiting the sphere of state activity and authority but should also pre-scribe the functions and responsibility of the state so as to make them beneficial to the bulk of society. This trend indicates a shift of focus from negative to positive rights. Negative rights suggest the sphere where the state is not permitted to enter. They suggest the sphere of freedom of individual, which shall not be encroached by the state. Positive rights, on the other hand, prescribe the responsibility of the state in securing rights of individuals. They require the state to take positive measures for the protection of rights of the weaker and vulnerable sections or those placed in a vulnerable position.

Broadly speaking, negative rights indicate as to which acts of the individual shall not be restricted by the state. Thus 'freedom of thought and expression' implies that the state shall not impose any restriction on individuals' thoughts and expression. So it comes in the category of negative rights. But if we say that the state shall provide for universal education to promote its citizens' faculty of thought and expression, it will be described as their positive right. In short, positive rights indicate the steps taken by the state to improve the life of its citizens and to help them in their self-development. For eg. Right to medical care, right to work, right to legal aid, etc. qualify as positive rights.

Scope of Human Rights:**Right to life**

It implies that an innocent person shall not be caught, detained, subjected to physical torture or death. Up to this point it is a negative right. With the growing consciousness of human rights, positive aspects of right to life are being increasingly highlighted. Accordingly, the state shall not only protect human life from the

onslaught of various offenders and natural calamities within the country as well as foreign aggressors, but also provide for a clean and pollution free atmosphere and take care of public health.

Right to property

It implies the right to own material things acquired by an individual through legal means. The state must protect this right of the individual. This right is the foundation of security of one's fruit of labour, day-to-day comforts of life, and one's means of a decent livelihood. However, modern consciousness nowhere regards the right to property an absolute right. The property that enables a person to establish control over lives of others will always be subject to compulsory acquisition by the state for public purpose.

Civil rights and Democratic rights

Human rights denote a wide range of rights. It comprehends Civil liberties, democratic rights, and a lot of other measures intended to maintain human dignity. Democratic rights broadly suggest a set of those rights, which enable the individual, as a full citizen of this munity, country or nation, to take part in public life, to elect his government of his choice, to influence government decisions, and to exercise political office through the prescribed procedure. This is primarily the arena of political rights.

Civil liberties, on the other hand, belong to the arena of legal rights. It is true that civil liberties can be maintained most effectively under a democratic system. But the existence of democratic stem itself is not enough to ensure the maintenance of civil liberties. After all a government- even a democratic government-involves the use of power, which can be used to suppress the freedom of citizens. Only a democratic government enables the Citizens to protect their own freedom by electing new officials if the government infringes on their civil liberties.

Broadly speaking, civil liberties include freedom of thought and expression, freedom of religion; freedom of movement, freedom of association, the right to fair trial and freedom of the persons. Therefore the principle of human rights further requires that no arbitrary law should be enacted, and no one should be subjected to inhuman treatment under false pretence of legal action. Cases of under trials languishing in jails for over a decade even without charges being framed against them involve a gross violation of human rights. No one should be subjected to extreme insult or torture for confession of a crime or disclosure of a secret. For instance if a woman has committed heinous crime, she should not be forced to a naked parade or outrage of her modesty as a measure of punishment. Similarly, when a criminal is awarded a death, he should be subjected to a peaceful death, not to an extremely painful death like being burnt alive or being thrown into boiling oil. Such inhuman acts cannot be permitted in a legal system of a civilized society. On the same logic, the use of atomic, biological and chemical weapons in war is banned under international law as it brings untold suffering upon the population, and thereby violates human rights. Punishment to any person must be pronounced by a judicial authority after a fair trial of the case. Deaths of an accused in police custody, rape of a woman in police custody or death of a suspect in a fake police encounter are the most serious violations of human rights. In 1980 some thirty accused in Bhagalpur jail (Bihar) were mercilessly blinded by the police. In 1994 Punjab police caused tattooing 'pickpockets on the foreheads of some tribal women such incidents were widely depreciated as violations of human rights. Protection of human dignity constitutes the core of human rights. It implies that a human being, however vulnerable, cannot be subjected to inhuman treatment for the gratification of any others on at whatever price! So any type of trade in human beings is ruled out: child labour involving children of tender age working in hazardous occupations amounts to violations of human rights.

National Human rights commission of India has focused on some other aspects of the problem concerning the focused protection of human dignity. Apart from the need to reform police system, it has emphasized the need to reform a administration of prisons and correctional institutions, the need to prevent the curse of prostitutions, the curse of manual scavenging, starvation deaths, and the need to improve the health of expectant mothers to save future generations from mental and physical retardation.

To conclude with, in the contemporary world the scope of human rights needs to be expanded further. The problems of protecting life and health in the present day society have become more complex. The

spread of terrorism, drug trafficking and environmental pollution are now threatening the life of people. It is the duty of the state to save people from that threat. This duty of the state must be included in the list of human rights. Whereas the efforts of nation-states might have been sufficient to protect the traditional human rights, the new human rights can be maintained only through a global effort.

Theories of Human Rights

If human rights are taken in a wider sense, i.e., as a means of protecting individual from onslaughts or atrocities of arbitrary power, there is hardly any dispute about their status. But if they are viewed as a tool in the hands of individual to safeguard his self-interest against the claims of the state and society, they are likely to receive different treatment from different schools of thought. These divergent views regarding the nature and status of rights or human rights may be called theories of human rights. Of these, liberal, libertarian Marxist, Communitarian and feminist theories are most important.

i) Social contractualist John Locke (1632-1704) expounded the liberal theory of rights and focuses on rights of individual against the state. Although Locke makes a distinction between society and state and sees no serious conflict between individual and society, his theory of rights deals with a possible conflict between individual and the state. He postulates that individuals form the state as a trust for the protection of their natural right to life liberty and property'. If the state fails in this duty, individuals can resist it. If it still fails, they can dissolve it. In fact, Locke does not make a distinction between state and government. That is why society will not disintegrate with the dissolution of state or government. In short, liberal theory of rights treats individual as the end and state as the means.

ii) Libertarian theory of rights as expounded by Robert Nozick (1938-2002) gives more prominence to the individual. It maintains its faith in the natural rights of the individual and treats the state as a private firm. Individually the state, chiefly for the protection of their property holdings. The state has no authority to engage in redistribute transfers among citizens who were originally its clients.

iii) Marxist theory of rights as expounded by Karl Marx (1818-1883) and V. I. Lenin (1870-1924) holds that the rights maintained by any society are the rights of its ruling class or dominant class at the expense of the dependent class. So the capitalist society protects the rights and interest of capitalists at the expense of the working class. Workers will have to overthrow capitalist and socialize the major means of production in order to create a new order that would protect the rights and interests of the working class.

iv) Communitarian theory of rights as advanced by Alasdair MacIntyre (1929-) focuses on individual's commitment to the community, which represents the common interest. This theory refuses to recognize independent interest or rights of the individual.

v) Finally, feminist theory as represented by Shulamith Firestone (1945-) and Sheila Rowbotham (1943-), among others, insists on restoring the rights of women in a male-dominated society. It seeks to transform the prevalent system of rights, which has been responsible for the subordination of women to men in all societies in all ages.

REFERENCES

1. Henry Steiner and Philip Alston, International Human rights in context, amazon publishers, 2000
2. Anthony R Pratkanis and Elliot Aronson, Age of propaganda : the everyday use and abused of persuasion, amazon publishers 2001
3. Robert Nozick, Anarchy, state and utopia, Amazon publishers, 2001