

Human Rights: Conceptual and Theoretical Outline

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Abstract

Human Rights are those inalienable rights which acquired its contemporary form and content through different stages of human societal evolution. A meaningful contextualization of the contemporary notions of human rights essentially necessitates a revisit of different methodological theoretical frameworks of human rights which are embedded with different material structures and power relations in the society. The rights of an individual should not be seen just for the sake of his responsibilities towards himself and his dependents. These rights need to be evaluated in the context of our moral responsibility to respect and observe one's life without which we cannot develop fully in a right perspective. Most importantly, without these we cannot develop ourselves as human beings. Human Rights are universally accepted rights which have virtually been accepted by States and Societies all over the world. The concept of human rights has received importance at the global level over a period of time. This paper includes the concept of rights, the meaning of human rights, its classification, theories and approaches. The focus of this paper is to provide the information on the conceptual and the theoretical frame of the concept of 'Human Rights'.

KEYWORDS: - Rights, Liberal, Socialist, Marxist, Feminist, Legal, Third World

Introduction

Rights enhance human life and its dignity. As a human being, every one has his/her own rights. The subject matter of rights is the human being. However, there should be an authority to promote and protect the rights. The term 'human rights' is a 20th century dictum for what has been traditionally called as 'natural rights', 'rights of man', 'basic rights', 'inherent rights', or 'birth rights'. The idea of human rights is as old as the history of mankind. The history of mankind has been firmly associated with the struggle of the individuals against injustice, exploitation and disdain. Rights are those conditions of social life without which no man can seek, in general, to be himself at his best (Laski 1951:91). The concept of rights provides an essential tool for the analysis of the relation between the individual and the State. When the State is regarded as a means and the individual as the end, the State cannot be armed with absolute authority over the individual. If the State claims authority, then the individual must claim rights. The individual owes allegiance to the State and obeys its commands because it serves his interests (Shamsi 2006:147). This means that a right is a claim of an individual recognised by the society and the State.

The concepts of 'rights' and 'Human Rights' originate from the voice of protest against the oppression perpetrated by the dominating groups in the society. Rights are meant to safeguard the individual from the irresponsible and the arbitrary use of power by the ruling classes. It is this vision of human liberation which has developed into the notion of human rights in the contemporary period. These rights do not

merely express certain demands, on the other hand, they are sought to be enshrined in the structure of the government, so as to prevent it from using its power in an arbitrary and irresponsible manner (Ibid:148). Human Rights are basic political and social conditions, to which every individual is entitled as a human being. These rights have the ultimate norm of politics today. Without recognizing the concept of human rights, no polity can be democratic. Every democratic constitution tries to recognize the concept of human rights in one way or the other. These rights are essential for the development of the human personality and human happiness. Undoubtedly, the concept of human rights has always been regarded as the backbone of every democratic set up (Sehgal 1998:100).

The underlying idea of human rights, the fundamental principles, which must be respected in the treatment of all men, women and children, exists in some form in all culture and society. Democracy can function only when the rule of law and the human rights prevail. Thus the functions of democracy are strengthened by the existence of the human rights and their enjoyment by the individuals. Democracy does not merely mean majority rule: it means majority rule coupled with human rights. In the absence of human rights, democracy is not possible (Trivedi 2003:13). Human Rights are inalienable and they belong to all humanity, irrespective of their caste, class, race, age or gender, religion, language, culture etc. and these should not be taken away from them under any circumstance. The term ‘human right’ covers a broad range of rights, from the right to freedom of religion to that of the right to food and shelter. All are equally important and are guaranteed to all individuals in equal measure. Thus the human rights are universal (South Asian Human Rights Documentation Centre 2006:1). In the stream of social sciences, we can find many researchers from different disciplines, who are inspired to explore the basis, nature and scope of this subject. So a historical enquiry may help to understand the growth and the development of the human rights in different phases of the human history.

Connotations of Human Rights

According to the United Nations Centre for Human Rights, human rights and fundamental freedoms allow people to fully develop and use their human qualities, intelligence talents and conscience and to satisfy the spiritual as well as other material 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 (U.N. 1987:4). The disavowal of human rights and fundamental freedoms is in reality a factor that contributes to an individual and personal tragedy. Besides giving rise to conditions of social and political unrest it is also responsible for sowing the seeds of violence and conflict within and between the societies and the nations. As the first sentence of the Universal Declaration of Human Rights (UDHR) states ‘respect for human rights and human dignity is the foundation of freedom, justice and peace in the world’ (Ibid). Bilden observes, “what we think human rights really are, will inevitably influence not only our judgement as to which types of claims are recognized as human rights, but also our expectations and programmes for the implementation and the compliance with these standards” (Bilden cited in Institute of Human Rights 2007:10).

Human Rights have been identified as those rights which are “important, moral and universal” (Shestakm 1984:74). As fundamental rights, these rights must not be taken away by any act of legislature or government and are often set out in the fundamental

law of the land i.e., the Constitution. As natural rights, these are seen as belonging to men and women by their very nature. Another way to describe them would be to call them as “common rights” because these are the rights which all men and women in the world should share, just as the common law in England, for example, was the body of the rules and the customs which unlike local customs governed the whole country (Fawcett 1969:51). The protection of Human Rights Act, 1993, has defined the term ‘human rights’ under section 2(D) as follows: “Human Rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforced by the courts in India” (Protection of Human Rights Act, 1993, Section 2 (D)). The concept of human rights has a dynamic nature in reference to time and space. Human Rights could thus be defined as the rights of an individual and the interest is to be protected collectively both at the international and the national levels by the coordinated efforts with the intervention of the States in pursuance of the intended objectives. Jack Donnelly defines Human Rights as moral rights of the higher order stemming from socially shared moral conceptions of the nature of the human beings and the condition necessary for a life of dignity (Donnelly 1985). According to S. Kim, human rights represent “claims and demands essential to the protection of human life and the enhancement of human dignity, and should therefore enjoy full social and political sanctions” (Kim cited in Kumar 1998:3).

From the above cited definitions of human rights, it is pretty clear that human rights, whether recognized or not, belong to all human beings at all times and in all places. It is the role of the State to uphold, promote and protect them in accordance with the existing laws of the land. Human rights represent the claims which the individuals or groups make on the society. They are the basic minimum requirements for the survival of the human beings in the society. These rights are meant to uphold human dignity and equality and to set forth liberty and fraternity to all without any kind of discrimination (UDHR 1948). Thus the human rights is a universal and legal concept. Individuality, universality, paramountcy, practicability and enforceability are some of the important features of the human rights doctrine. It, however, has to be said that difficulty in defining the human rights arises as there is no single and simple conception of its real meaning. It has, in fact, varied from time to time, place to place and from people to people. Thus, the ongoing debate would continue as long as a striking balance between the contending approaches to public order and scarce resources takes place.

Classification of Human Rights

Human Rights can be broadly classified according to two different perspectives - from the perspective of various aspects of human life and from the perspective of the methods of securing them. Following are the different classification of human rights:

Natural Rights – Natural rights are those rights which are considered to be inherent and integral to human nature. In fact, every individual by nature is given certain rights which cannot be taken away from him by any authority. Such rights include the rights of the mind and also the rights of acting as an individual for his own comfort and happiness, provided they are not injurious to the natural rights of others (Austin 1832).

Moral Rights – A moral right is one which merely rests on social recognition but has not yet been recognised by the State and cannot be enforced by any legal process or through the courts. These rights are based upon the moral conscience of the community. They are simply aspirations and ideals of the people who claim it. Sometimes, people justify these rights on the ground of the role they perform or the position they occupy in the society (Bacon 1985). For example, a child has a moral claim to be properly brought up and educated by the parents; a teacher has a moral claim to be respected by his pupils, etc. These rights lack the force of the law. Their violation is not accompanied by the physical force of punishment though they may invite public appropriation or condemnation.

Fundamental Rights – There are certain rights which are more important and basic than the others. For instance, the right to life is the most basic of all rights upon which the enjoyment of other rights depends. These rights can never be restricted or taken away by any authority. Thus every society has a fundamental duty to protect the rights during all the ages (Green 1882). Prominent among them include the right to be recognized as a person before the law, the right to equal protection under law, and freedom from illegal arrest or detention.

Legal Rights – Legal rights are the privileges of man which are recognized, sanctioned and enforced by the State. These rights are also guaranteed and protected by the law of the State. Thus, legal rights are uniform and open to all, irrespective of caste, colour, race or culture. Legal rights may further be classified into civil rights and political rights (Grotius 1609).

Civil and Political Rights – Rights that are granted by the government or the civil society are called civil and political rights. These rights provide the basis for the fulfillment of elementary conditions of social life. In the absence of these rights, civilized life is not possible and they are, therefore, considered very essential for the free and progressive life of man (Mill 1859). Civil and political rights, however, include the right to freedom of speech, right to life, right to personal liberty, right to property, right to freedom of religion and conscience, right to association and assembly, right to vote, right to be elected, right to hold public office etc. Political rights are the foundation of a democratic polity. In fact, it is only through the exercise of these rights that democracy actually comes into existence, and it is only a democratic Constitution which provides political rights to the people (Donnelly 1985). Civil rights vary from State to State and from time to time. Part III of the Indian Constitution¹ has resemblances with civil and political rights.

Economic, Social and Cultural Rights – These are entitlements of the individual vis-à-vis the State, in order to eradicate social inequality, economic imbalances and to limit disadvantages caused by social structure, age and so on. These rights are bestowed by the State. However, it is not necessary for State is to meet these entitlements all at once. It depends upon the economic resources of the society. Most of the socialist States recognize these rights as fundamental rights of the people (Iyer 1999). Right to equality, right to work, right to have family, right to privacy, right to information, right to public assistance during old age and sickness, right to health care, right to special care during childhood and during motherhood are some of the examples of these rights (Austine 1996). Such rights have been incorporated in part IV of the Constitution of India as the Directive Principles of State Policy².

Rights have a tendency to evolve with the changing circumstances of the society. Certain rights, like the right to development, right to know, right to self determination, rights relating to the environment etc. are of recent origin. They are known as the new generation rights. Since the adoption of the Universal Declaration, there has been many controversies regarding the question of importance of rights, i.e., which rights are more important compared to others? The representatives of some States had been asserting that the civil and political rights are more important than the economic, social and cultural rights. They also had serious reservations about acknowledging the right to development which, if effectively implemented, would affect the existing pattern of economic and political power in the world. Other countries stressed the importance of economic, social and cultural rights and the right to development. These controversies, in principle, can be said to have been resolved when all human rights were recognized to be indivisible (Borgohain 1999). The Vienna Declaration, after a Conference in which the representatives of 171 countries and hundreds of Non Governmental Organizations participated, unambiguously affirmed that all human rights are universal, indivisible, interdependent and interrelated. It has also been affirmed that democracy is the sole guarantor of the individual rights - civil, political, economic, social, cultural and collective rights, 'within States and within the community of States' (Das, Dev & Dev 1996).

Theories/Approaches of Human Rights

In order to gain a basic understanding of the human rights, one should look at major theories/approaches of the subject so that the shifting priorities of the rights during the different phases of history could be observed. Various theories have been propounded about human rights by different writers from time to time. The function of theory, however, is to provide an analytical tool by which it is possible to determine the precise subject matter of the concept upon which there might be an agreement. Historical experience, socio cultural patterns, ideological underpinnings, socio-economic structure, political system, their inter-relationship and interaction are the contexts within which the human rights are formulated and become operative. However, the aforesaid contexts vary to a great extent in different perspectives from the concept of human rights in general. Following are the major theories/approaches concerning human rights:

The Liberal – Individualist Theory of Natural Rights

The liberal theory of rights was propagated by the exponents of liberalism in the seventeenth and the eighteenth centuries. The Liberal – Individualist Theory of Natural Rights is the earliest theory of rights. Though it can be traced back to the ancient Greek city states, yet it came into force in the seventeenth century when a persistent and powerful body of opinion in the West popularised the idea that all men possess certain rights by nature, irrespective of particular political, social or legal institutions. It meant that these rights are the gifts of nature (Lock 1689). The individual has some natural, inalienable, fundamental, inherent, absolute and sacred rights by birth. They are independent of the Society and the State. They cannot be taken away by any other individual or the society. According to the exponents of this theory, the natural rights are pre-political and according to some, they are pre-social as well (Ibid). Thomas Paine, Grotius, John Locke and Hobbes³ are the main exponents of this theory. To them, every individual possesses a unique identity and is expected to account for his actions as per his own conscience.

The doctrine of natural rights has been strongly criticized. First, it is variously interpreted and there is no universal concept of natural rights. Secondly, among the supporters of this theory there is no official or complete or generally agreed list of natural rights. Some justify slavery as natural; others condemn it as being unnatural and artificial. Some assert that by nature men and women are equal (Montesquieu 1748). Others deny it. Some hold that men are naturally good; others believe that by nature they are wicked. In spite of the above defects, the theory contains a large amount of truth. If we interpret natural rights as ideal rights or moral rights which we ought to have in future, the conception is a very valuable one.

According to the Western liberal thought, man, by nature, is isolated and autonomous, possessing certain inherent and inalienable rights with the establishment of a civil and political society instituted through a social contract among the individuals. Man gave up some of his natural rights whereas others remained inalienable (Lauterpacht 1950). And it is the duty of the State to protect individual safety, security, rights and property in pursuance of a just and orderly society. In addition to this autonomy of the human nature, further elaborations were made in the context of this private property. Private property caused competition and conflict with other individuals. Thus, private property became the pivot of a free enterprise economic system and subsequently became a fundamental human right, thereby making the approach to rights as politico - materialistic in nature. A competitive economic system and a liberal State system thus provided the institutional framework for the defence of private property and the free exercise of the rights was reflected in the nature of the developing capitalism in the West. In this context, inalienable, individual, civil and political rights became the base of the new society (Kumar Palai 1998:17).

The genesis of the concept of human rights, as we conceive it today, can be traced back to the emergence of classical liberalism. Classical liberalism made a passionate defence of the principles like competitive individualism, private property, market ethics and individual autonomy. A dominant strain of this line of philosophy is seen in the writings of John Locke, Thomas Hobbes and J.S. Mill⁴. Individuals, in their liberal view, are equal and autonomous beings whose natural rights pre-date national and international law (Mill 1859). Human rights are said to be the moral rights that not any public authority can violate. The liberals demand their predecessors who advocated extreme powers for the State. Further they favoured an economic system based on free enterprise and free competition. The legal system advocated in this connection was one that provided a body of predictable and ascertainable standards of behavior allowing each economic factor to remain a set of relatively safe expectation as to the conduct of other social actors (Kaul 2004:622).

Liberal approach gives more stress on civil and political rights. These rights are focused on the individual rather than the society. After the industrial revolution, the bourgeois emerged and they rebelled against the constraints and control imposed by the government on the one hand, and demanded their rights, freedom, the interplay of market forces and political power, on the other. This caused the emergence of a political system based on individual, civil and political rights (Nozick 1974). This kind of system subsequently resulted in gross inequality and economic imbalances of the society. To counter all these socio-economic upheavals, a new kind of political system called the 'welfare state' emerged during the early 20th century. The idea of the welfare state characterizes that the government is responsible to provide certain

benefits for the unemployed, the handicapped, the aged and the other disadvantaged groups in the society, which encompasses certain principles of capitalism, individualism and socialism.

The Legal Theory of Rights

By the end of the eighteenth century and the beginning of the nineteenth century, the limitations and the shortcomings of the Liberal – Individualist Theory of Natural Rights were fully exposed. For instance, it was clear that the individuals could not enjoy the so called ‘natural rights’ unless they were recognized by the State and protected by the laws of the State. Thus, the rise of the legal theory of rights was a logical corollary of the necessity of the recognition and protection of the natural rights of the individual (Grotius 1609). Thomas Hobbes, John Austin, Jeremy Bentham, Ritchie and Solmond⁵ are the main proponents of this theory. According to them, rights are purely utilitarian concepts and thus rules and regulations are necessary for the identification and protection of one’s rights. Towards the end, every individual has to sacrifice certain rights and freedoms for the general welfare of the society. The State is the only source of rights which has legal force behind them. They are protected and enforced by the law of the State. If anybody tries to violate or take away the right of another individual, he is punished by the law of the State (Ibid). That is why the exponents of the legal theory of rights maintain that the rights can exist only within the State. There can be no rights outside the State.

The theory of legal rights has been strongly criticized by many writers. According to Laski⁶, the State does not create the rights; it merely recognizes, maintains and coordinates them, so that all may enjoy the benefits of the rights (Deol 1976:127). Some critics point out that the law alone does not create the rights. Rather, it recognizes and protects them. Custom, tradition and morality also have a basis for rights. However, this theory claims that certain specific and recognized rights are granted and guaranteed by the State.

The Historical Theory of Rights

This theory lays emphasis on the fact that the rights are the products of history. In other words, the theory holds that ‘History makes rights’. This theory was propounded by the thinkers of the historical school of philosophy in the 19th century - Edmund Burke, Sir Henry Maine, Buryes,⁷ etc. These thinkers maintained that the rights are the products of long historical evolutionary processes in the society (Burke 1795). And, rights are not static but go on changing with the changing time and circumstances. It is maintained by Edmund Burke⁶ that while the French Revolution⁸ (1789) was based on the abstract rights of man, the English Revolution⁹ (1688) was based on the customary rights of Englishmen. This statement contains much truth. There is no denying the fact that the French Revolution was the outcome of the political, economic and social conditions which prevailed in France in the 18th century. It had for its battle - cry the abstract principles of liberty, equality and fraternity, applicable to all men (Burke 1790). The English Revolution, on the other hand, was simply a reassertion of the rights that the Englishmen had enjoyed since the days of the Anglo-Saxon¹⁰ rule and which has found expression in the documents like the Magna Carta and the Petition of Rights.

There is some truth in the historical theory of rights. Many of the present rights are based on customs and traditions. However, it does not mean that the origin of all our rights can be traced back to ancient customs and traditions. Rights are dynamic. When they are tied to the customs alone, we altogether ignore the dynamic nature of the society and, accordingly, the changing contents of the rights (Castberg 1968). Rights change with the facts of time and place. As such, history cannot be regarded as the only basis of rights. An absolute right or standard is not rendered by any types of customs. It is also pointed out by the critics of this theory that all rights are not based on customs. For example, the right to social security or the right to education or the right to work, which are of recent origin and which most of the welfare States provide, have no basis in customs. Hence, the historical theory of rights is not correct. Even though history does not provide an absolute right or standard, it provides some aspects of the development of rights.

The Idealist or Personality Theory of Rights

The Idealist Theory of Rights is also called the 'Personality Theory of Rights'. The chief exponent of this theory was the idealist philosopher, T.H. Green¹¹ of England. Some other writers also supported this theory. According to this theory, the rights are the external conditions essential to man's internal and real development. Human beings need healthy and congenial external conditions for the development of their personality (Green 1882). These conditions can only be created by the State. Green says that the rights are powers 'necessary to the fulfillment of man's vocation as a moral being' (Arora & Grover 2004:318). So the Idealist theory of rights lays emphasis on the creation of those conditions which help the individual to develop his personality to the highest possible extent.

The idealist theory of rights considers that the supreme right of every man is the right of personality. Hence the perfection of human personality is the end, and in order to achieve this end, all rights are directed and subordinated to it. In other words, the right to personality is man's fundamental right and all other rights are derived from it. Rights like the right to life, the right to liberty and the right to property are not absolute rights. They are to be judged by their contribution towards the development of the human personality (Green 1882). The moment an individual abuses any of these rights for self development, the society is justified in taking it away from him. This theory looks at the rights from a highly moral point of view.

The Idealist Theory of Rights is vague and ambiguous. It is very difficult either to fix the standards of moral freedom or to fix the conditions necessary for each individual for his fullest self development. Nevertheless, the Idealist Theory of Rights has some relevance in the theories of human rights because it emphasizes on one absolute right of all human beings – the right of personality.

The Social Welfare Theory of Rights

The Social Welfare Theory of Rights was popularized by the utilitarians, Jeremy Bentham and J.S. Mill¹², during the later half of the 19th century. It came to be accepted because the philosophy of 'individualism' could not provide harmony in the society or reconcile harmoniously 'self-interest' with the 'social interest' (Mill 1879). It, thus, arose as a protest against the exploitation and dehumanization of the 'social and moral man'. It pointed out that the rights are created by the society and are aimed

at realizing social welfare. And, since rights are conditions of social welfare, law, customs, usages, traditions and natural rights, all people 'should yield to what is socially useful or socially desirable'. What is socially useful should have for its test, the greatest happiness of the greatest number (Mill 1859). In other words, the main thrust of the Social Welfare Theory of Rights is that the rights of the individual are limited by the considerations of social welfare and no individual can be given rights against the welfare of the society.

The Social Welfare Theory of Rights has the great merit of upholding the principle of social justice. It lays emphasis on the social character of rights and the importance of social welfare. This theory does not say what exactly social welfare means or what precisely constitute happiness. The Government has no right to do political wrong in the name of social good. So the social welfare theory of rights focuses only on the welfare aspects of the rights.

The Legal Realist Theory of Rights

The Legal Realist Theory of Rights originated in the United States of America (USA) with the expansion of the regulatory activities followed by President Roosevelt's 'New Deal Policy'¹³. A group of jurists such as Karl Llewellyn, Roscoe Pound and others discussed the point as to what law does, rather than what law is, in a highly complex and industrialized society. These theories did not propound a common theory of rights. Rather, they considered rights as the end product of both the interaction of prevailing moral values of the society as well as the broad-based international sharing of values. So human rights, as they argue, are nothing but a manifestation of an ongoing process rather than a theoretical debate (Castberg 1968). This kind of a new approach to the concept of rights does away with the problems relating to the abstract nature of the concept. However, this theory goes about questioning the existing laws, their values and the actions, so far enacted upon the society. In other words, it questions the shortcomings and ineffectiveness of the existing laws but does not prescribe any holistic solution which enhances the dignity and worthiness of human life (Laski 1925).

The Marxist Theory of Rights

Rights, according to Marx,¹⁴ are simply a bourgeois concept and a product of bourgeois capitalist society primarily designed to maintain and reinforce the predominant position of the ruling class (Davidson 1993:37). Marx regards the State as a coercive agency to uphold the particular type of social organization and law as a tool of the State that perpetuates and safeguards the interest of the dominant group in the society. He firmly believes that rights can exist and flourish only in a classless society where all are equal and no one is an exploiter. Social and economic rights are thus the main concern of this theory (Marx 1843). However, the contribution of the Marxist thought to the development of international concern on economic, social and cultural rights has been found in the International Covenant on Economic, Social and Cultural Rights¹⁵ (ICESCR) in 1966. However, the Marxian Theory of Rights does not include the elements of religion, customs, tradition and morality as the integral components of human rights (Baxi 2008). This theory focuses only on the economic aspects of the society.

According to the socialist thought, human nature is largely determined by the conditions of man's material life and not as an autonomous individual in the state of nature. Engels argued that prior to civilization, men and women lived in a state of primitive communism. It was a communal existence characterized by equality among all, an existence in which land, animal and tools were shared (Baxi 1987). The accumulation of individual wealth, private property, ownership of means of production and class differences were developed at the later stages of history, where the property owners claimed their rights and principles over others (Donnelly 1985:73). This according to the socialists became the very basis of capitalism.

According to Marx, "the so-called rights of man nothing but the rights of egoistic man, of man separated from other men and from the community. None of the so-called rights of man, therefore, go beyond egoistic man, beyond as a member of civil society, that is an individual withdrawn into himself, and separated from the community" (Marx 1848). Writing in the 'Holy Family', Marx and Engels¹⁶ stated, "The recognition of the rights of man by the modern State has no other meaning than the recognition of slavery by the State of antiquity did. In other words, just as the ancient State had slavery as its natural basis and the modern State has wage labourer as its natural basis, civil society and the man of civil society i.e., the individual man linked with other men only by the ties of private interest and unconscious natural necessity, the slave of labour for gain and of his own as well as other men's selfish needs" (Marx & Engels 1848).

Marx argued that the rights were simply bourgeois concepts and a product of bourgeois capitalist society that were designed to maintain and reinforce the pre-eminent position of the ruling class. The socialist philosophy contends that the civil and the political rights are bourgeois rights emerging out of the rise of capitalism which serve the interest of capitalists. The socialist countries give priority to social and economic rights rather than to civil and political rights, both in theory and practice.

Third World Approach

Most of the third world countries, freed from the clutches of the colonial legacy, have three important things to achieve, viz, economic development, industrialization and nation building. In due course of time, one of the most important as well as the pertinent questions that has made the process of development all the more difficult is the question of the rights/ freedoms of man vis-à-vis State in these countries. The third world countries are characterized by their traditional cultural patterns and ethnic social set up; they do not fully share either the intellectual heritage of the West or that of the socialist interpretation of rights (Baxi 2008). However the contemporary nationalist elite, having been influenced by the concepts and the ideologies of the West, have developed a new kind of approach to the theory and practice of human rights.

Many Asian, African and Latin American countries (Third World countries) do not recognize the 'universality' of human rights. To them the 'universality of human rights' is a Western imposition on countries with different moral standards and social traditions - 'an act of moral and cultural imperialism' (Said 1993). The majority of the third world countries even though parties to the U.N. charter and signatories to the Universal Declaration, see that the Western countries are using human rights as an

instrument for their political and ideological hegemony. They consider the Western interpretation of human rights as nothing but a strategy for establishing cultural, political and economic domination over them. Thus the Third World countries view the Western posture on human rights with strong skepticism.

The claim of the Asian African countries is that it was unjust and unfair on the part of the Western countries to demand that the whole countries should accept and practice the Western concept of human rights that had developed over centuries within its political and historical context. It is also irrational for the Western countries to expect that unstable and undeveloped countries of Asia, Africa and Latin America should ensure broad range of 'individual freedom' like the Western countries – as guaranteed by these countries to their people (Amin 2010). The problem is that, the developed countries of the West have attained progress in social economic and political spheres. In most of these countries, there exist a civil society which accepts democracy and democratic principle, which are so relevant for the prevalence of human rights and values. Since these countries have a sound economy, improved social life and mutual political culture, there is no problem in providing the people with maximum freedom and right.

But the situation is just opposite in the Third World countries, even though some of them have attained some sort of economic development and few countries like India accepted 'democracy' as a form of the government. Many Islamic countries of Asia and other countries of Africa lack democratic governments, a civil society etc. Social problems are so high in these countries. Problems like instability of the government, poverty, unemployment, riots, epidemics etc. are a regular feature. To achieve social progress and to eliminate economic inequalities, the Third World countries may compel the governments to impose certain restrictions and limitations upon the individual freedoms and the rights. Sometimes individual rights may be taken off for the implementation of socio-economic objectives (Baxi 2008). Thus the Third World countries, until they reach the stage of socio-economic development as the West may not be able to recognize 'civil and political rights', high above 'socio-economic and cultural rights' and that they may not be able to be guaranteed the same extent of individual freedom and rights as the West. Thus, these countries demand that, while all governments should uphold human rights, each individual country should be allowed to interpret and implement the goal according to its own circumstances (Chandhooke 1995). Thus one of the criticisms voiced against the UDHR by the Third World countries is that it lays greater emphasis on 'civil and cultural rights'.

The Third World countries have to struggle to attain economic development, along with the preservation of their religious and cultural heritage. Thus, they at times, find themselves in a peculiar situation. Sometimes, they behave in a manner more socialistic than the socialist countries, and on other occasions become more capitalist than the capitalist countries. This conflict between their inherited socio-political, economic infrastructure and their projected desires for development is clearly visible in their approach towards the human rights (Tyagi 1981:119).

Feminist Approach

Both in Vienna and Beijing, at the UN World Conference on Human rights in 1993, and at the UN World Conference on Women in 1995, respectively, women's rights were recognized as human rights. It was for the first time that the women rights got

recognition as an aspect of international human rights law. The underpinning of women's rights with human rights gave women's rights discourse a special trajectory, emerging as a major innovation of the human rights policy within the framework of the international law (Deol 1976). However, with respect to other fields, women's rights are more fragile, have weaker implementation procedures and suffer from inadequate financial support from the United Nations. Some years ago women's rights have been catapulted on to the human rights agenda with a speed and determination that has rarely been matched in international law. There are two aspects to this process: First, the attempt to make the mainstream human rights responsive to women's concerns; and second, the conceptualization of certain gender specific violations as human rights violations. These developments have far-reaching implications for the theory and practice of human rights in the United Nations System. The major turning point was the UN Conference on Human Rights in Vienna in 1993¹⁷ (Signal 2008:16).

The central theme of the feminist approach is that the women should get rights and liberties in all fields par with men. The existing discrimination against women should be eliminated. The human rights for women are an inalienable, integral and indivisible part of the universal human rights. The full and equal participation of women in the political, civil, economic, social and cultural lives, at the national, regional and the international levels, and the eradication of all forms of inequalities are the objectives of the international community (Menon 2004). So the human rights of women should form an integral part of the UN activities. It is often said that the civil and political rights are the first generation of human rights; economic, social and cultural rights are the second generation; group right and the right to self determination, the right to development, the right to protect the environment are considered to be the third generation rights (Chhanhoke 1995). The women's rights are considered to be the fourth generation rights. The human rights discourse has nearly universal acceptance and carries with it an air of universality and legitimacy.

Conclusion

The concept of 'Human Rights' is as old as the history of mankind. It was traditionally known as 'natural rights', 'rights of man', 'basic rights', 'inherent rights', or 'birth rights' etc. in different ages. With the passage of time, different theories, approaches and areas of specialization have developed in the field of human rights. It has been asserted that human rights are inalienable and belong to all humanity, irrespective of caste, class, language or whatever it is. Many human rights advocates have opined that the human rights are moral rights embedded in human beings, which make our freedom meaningful. The section on the classification of human rights introduced the various kinds of rights like the natural rights, moral rights, fundamental rights, legal rights, civil and political rights, economic, social and cultural rights and certain new generation rights as well. A brief glimpse into various theories/approaches of human rights including the liberal individual, the legal, the historical, the idealist, the social welfare and the Marxist theories, helped to understand the shifting priorities of the rights during the different phases of history. The Third World and the Feminist approaches also proved helpful to understand the varied and the dynamic nature of human rights. As a conclusion, it should be maintained that not a single theory exists until now which is capable of sufficiently explaining the origin and nature of rights. Each theory is the product of its own time and in conformity with the genius of the people with whom the exponents of the theory were associated. All such theories consist of some element of truth, which

cannot be ignored. But there is one eternal truth which cannot be ignored: that individual good and social good go together. The society is an organic unit and the welfare of the community is built upon the welfare of the individuals; both go hand in hand. The theories discussed so far put forward different aspects and perspectives of Human Rights. Each theory has its own validity.

Notes

1. The Fundamental Rights are the basic human rights that every Indian citizen is endowed with for a proper and harmonious development of personality. These rights have universal application, which all the citizens enjoy irrespective of race, place of birth, religion, caste or gender. These charter of rights contained in Part III of the Constitution of India, guarantees individual rights that are common to most liberal democracies, such as equality before law, freedom of speech and expression, and peaceful assembly, freedom to practice religion, and the right to constitutional remedies for the protection of civil rights by means of writs. It is believed that the Fundamental Rights originated from many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man etc.
2. The Directive Principles of State Policy refers to the principles that are attributed to the Central and the State governments of India, which they have to keep in mind while framing laws and policies. These provisions are included in Part IV of the Constitution of India. It is the duty of the State to apply these principles in making laws to establish a just society in the country. These principles have been inspired by the Directive Principles contained in the Constitution of Ireland. The principles of Gandhism have also exerted influence on the Directive Principles, which deal with social justice, economic welfare, foreign policy, and legal and administrative matters. Directive Principles are classified under these categories: Gandhian, economic and socialistic, political and administrative, justice and legal, environmental, protection of monuments, peace and security.
3. See for details- Thomas Paine (2003[1776]): *Common Sense and Other Writings*, (ed.). Gordon Wood, New York: Modern Library., Hugo Grotius (2004[1609]): *The Free Sea*, (ed.), David Armitage, Indianapolis: Liberty Fund., John Locke (1988[1689]): *Two Treatises of Government*, ed. Peter Laslett, Cambridge: Cambridge University Press.
4. See for details- Thomas Hobbes (1994[1651]): *Leviathan: With Selected Variants from the Latin Edition of 1668*, (ed.) E. Curley. Indianapolis: Mackett., John Locke (1988[1689]): *Two Treatises of Government*, ed. Peter Laslett, Cambridge: Cambridge University Press, Stuart Mill (2008 [1879]): *Principles of Political Economy and Chapters on Socialism*, Oxford: Oxford University Press.
5. See for details- Thomas Hobbes (1994[1651]): *Leviathan: With Selected Variants From The Latin Edition of 1668*,(ed.) E. Curley. Indianapolis: Mackett., John Austin (1995): *The Province of Jurisprudence Determined [1832]*, (ed.), W. Rumble. Cambridge: Cambridge University Press., Jeremy Bentham (1999 [1816]): *Political Tactics*, (ed.), Michael James, Cyprian Blamires, and Catherine Pease-Wakkin, Oxford: Clarendon Press.

6. See for details- H.J. Laski (1925): *A Grammar of Politics*, London: Allen and Unwin.
7. See for details- Edmund Burke (1991[1795]): *First Letter on a Regicide Peace, The Writings and Speeches of Edmund Burke*, 10 Vols. Oxford: Oxford University Press.
8. The French Revolution which had a lasting impact on the French history and that of the world was a period of radical social and political upheaval in France. The absolute monarchy that had ruled France for centuries collapsed within three years. The French Revolution began in 1789 with the convocation of the Estates-General in May. The first year of the Revolution saw members of the Third Estate proclaiming the Tennis Court Oath in June, the assault on the Bastille in July, the passage of the Declaration of the Rights of Man and of the Citizen in August, and an epic march on Versailles that forced the royal court back to Paris in October. In the next few years, there were struggles between various liberal assemblies and a right wing of supporters of the monarchy intended on thwarting major reforms. The French society underwent an epic transformation, as feudal, aristocratic and religious privileges evaporated under a sustained attack from radical left-wing political groups, masses on the streets, and peasants in the countryside. The growth of republics and liberal democracies, the spread of secularism, the development of modern ideologies, and the invention of total war all mark their birth during the Revolution.
9. The Glorious Revolution marked the event of the overthrow of King James II of England (James VII of Scotland and James II of Ireland) by a union of English Parliamentarians with the Dutch stadtholder William III of Orange-Nassau (William of Orange). King James' policies of religious tolerance after 1685 met with increasing opposition by the members of leading political circles, who were troubled by the King's Catholicism and his close ties with France. The crisis facing the King came to a head in 1688, with the birth of the King's son, James Francis Edward Stuart, on 10th June (Julian calendar). This changed the existing line of succession by displacing the heir presumptive, his daughter Mary, a Protestant and the wife of William of Orange, with young James as heir apparent. William successfully invaded England with a Dutch fleet and army. It led to his ascending of the English throne as William III of England jointly with his wife Mary II of England.
10. The Anglo-Saxons were the population in Britain partly descended from the Germanic tribes. These tribes migrated from Continental Europe and settled in the south and east of the island. This occurred in the beginning of the early 5th century. The Anglo-Saxon period denotes the period of the English history after their initial settlement through their creation of the English nation, up to the Norman Conquest; that is, between about 550 and 1066. The term Anglo-Saxon is also used for the language, which is known as the Old English today. It was spoken and written by the Anglo-Saxons in England (and parts of south-eastern Scotland) between at least the mid-5th century and the mid-12th century, after which it is known as Middle English.
11. See for details - Thomas Hill Green (1967[1882]): *Lectures on the Principles of Political Obligation*, Ann Arbor: University of Michigan Press.

12. See for details - Jeremy Bentham (1999 [1816]): Political Tactics, (ed.), Michael James, Cyprian Blamires, and Catherine Pease-Wakkin, Oxford: Clarendon Press., John Stuart Mill (2008 [1879]): Principles of Political Economy and Chapters on Socialism, Oxford: Oxford University Press.
13. The New Deal was a series of domestic economic programmes that were enacted in the United States between 1933 and 1936. They consisted of the laws passed by the Congress as well as the Presidential executive orders during the first term of President Franklin D. Roosevelt. The programmes were in response to the Great Depression, and focused on what the historians call the "3 Rs": Relief, Recovery, and Reform. That is to say, Relief for the unemployed and poor; Recovery of the economy to normal levels; and Reform of the financial system to prevent a repeat depression. The New Deal produced a political realignment. The Democratic Party was made the majority and the Republicans were split, into conservatives and liberals. The conservatives opposed the entire New Deal as an enemy of business and growth, and the liberals accepted some of it and they promised to make it more efficient.
14. See for details - Karl Marx (1993 [1867]): Capital: A Critique of Political Economy, London: Penguin Classics., Karl Marx and Engels (1978[1848]): The Communist Manifesto, in the Marx-Engels Reader, (ed.), R. Tucker, 2nd edn. New York and London: W.W. Norton.
15. The International Covenant on Economic, Social and Cultural Rights (ICESCR) is the name of a multilateral treaty, which was adopted by the United Nations General Assembly. Even though it was adopted on 16th December 1966, it came into effect from 3rd January, 1976 onwards. At present the Covenant has 164 parties. They take special care to grant economic, social, and cultural rights (ESCR) to the Non-Self-Governing and Trust Territories as well as the individuals. Other rights include labour rights and the right to health, the right to education, and the right to an adequate standard of living. Six more countries have signed the Covenant including the US, but have not formally accepted it.
16. See for details - Karl Marx and Engels (1978[1848]): The Communist Manifesto, in the Marx-Engels Reader, (ed.), R. Tucker, 2nd edn. New York and London: W.W. Norton.
17. The Congress of Vienna, which came to be known as the 'concert of Europe', was attended by the ambassadors of various European States was held in Vienna from September 1814 to June 1815. Klemens Wenzel von Metternich, an Austrian statesman chaired the Conference. This meeting was aimed at providing a long-term peace plan for Europe by solving the serious issues that arose from the French Revolutionary Wars. It turned out to be one of the first international meetings aimed at maintaining a peaceful balance of power in Europe. It proved to be a model for the organizations such as the League of Nations in 1919 and the United Nations in 1945.

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