



THEORIES OF HUMAN RIGHTS

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Introduction

Generally, theory means a set of assumptions, propositions, or accepted facts that attempts to provide a plausible or rational explanation of cause-and-effect (causal) relationships among a group of observed phenomenonⁱ. The Oxford dictionary says that theory means a supposition or a system of ideas intended to explain something, especially one based on general principles independent of the thing to be explained.

Theory is a term which comes from the Greek word '*theoreen*' meaning 'to look at'. Human rights theories are important in the democratic societies. In order to gain the basic understanding of human rights one should look at certain theories of the subject so that shifting priorities of rights during different phase of history could be observed. The elements of a theory of human rights, which sees them as pronouncements in social ethics, sustainable by open public reasoning. It is appropriate to explore the theories of human rights, which will be compassionate for further expansion.

Theory

Fact is empirically verifiable observation. It can be expressed in a proposition. Facts help to initiate theories. Theory refers to the relationship between facts or the ordering them in some meaningful way. Facts also lead to the reformation of existing theory. They also classify and redefine theoriesⁱⁱ.

No theory is final or an irrefutable explanation of something. Researchers modify a theory and in certain cases it disproves a theory.

The process of theory building starts with the observation of persons, groups, their interaction or behaviour, event, activities and such other factors. There are four dimensions or parameters of the theory building process: validity, testability, generality and conceptual frame workⁱⁱⁱ.

Hypothesis means 'a less than generally held view'. Hypothesis is formulated at the start of the research and generally based upon narrow range of facts, a kind of preliminary assumption. Whereas a theory is a generalisation arrived at after a verification and it deals with a broader range of facts^{iv}. A theory is an integrated body of definitions, assumptions and general propositions covering a given subject matter.

It is worthwhile to understand the definition of human rights, before explore the theories of human rights.

Human rights may generally define as those rights which are inherent in our nature and without which cannot live as human beings^v. Human rights are basic rights and freedoms to which all humans are entitled. Proponents of the concept usually assert that all humans are endowed with certain entitlements merely by reason of being human.^{vi} Human rights are thus conceived in a universalist and egalitarian fashion. Such entitlements can exist as shared norms of actual human moralities, as justified moral norms or natural rights supported by strong reasons, or as legal rights either at a national level or within international law.

Human rights are paramount, sacrosanct, eternal and transcendental in nature and ought to be treated as inalienable and inviolable for preserving the dignity of the people, however, cannot be imagined without the security and existence of a well regulated society. Society and the State can alone guarantee human rights to the individual but also demand observance of social norms from the citizens.^{vii}

Section 2 (1) (d) of Protection of Human Rights Act, 1993, defines that "Human Rights" means the rights relating to the life, liberty, equality and dignity of the individual guaranteed by the constitution of India or embodied in International Covenant and enforceable by courts in India^{viii}. Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.

Theory of Natural Rights

The first version of human rights theory assumed that God was the source of human rights. It is the classical theory of „Natural Rights“. The concept of natural law is originated in ancient Rome. The natural law is laws of reason and is of universal application. It binds the people together in a common social bond by recognising the intrinsic worth in human personality.



If by natural rights we mean those rights which are inherently for the good of man and which tends to create conditions to lead a happy and full life and ensure the realization of his potentialities as a human being, we agree with it and citizens must be guaranteed such freedom. The State, which does not guarantee these basic freedoms, denies to its citizens the very end for which exists^{ix}.

According to this theory, rights belong to man by nature and thus self evident truths. They were considered as inborn, absolute, pre-civil and even pre-school. The theory of natural rights is the earliest one. John Locke, Grotius, Tom Paine, Thomas Paine are the main propounders of this theory.

Legal Theory of Rights

Legal theory of rights proclaims that there are no rights, which inherent man; they are created and maintained by the State. State is the source of all rights; there can be no rights without or against the State. To have rights against the State is tantamount to saying that the individual has no right at all^x.

Rights, which are not supported by laws of the State, remain only claims. The State is the source of the rights. No State cans for long overlook the claims, which are deemed essential for moral development of man. Once these claims are recognized, they become rights. Thomas Hobbes, John Austin and Jermy Bentham are main exponents of this theory.

Historical Theory of Rights

Historical Theory of Rights emphasizes that rights are product of history. They have their origin in customs, which one possessed practical social utility and passed on from one generation to another, ultimately having been recognized as inherent claims or rights. In explaining natural rights, advocate of the historical theory maintain, the custom is their sanction. They are considered fundamental to the development of man, because they have been maintained by a long unbroken customs and generations have habitually followed them. Edmund Burke and Henry Maine are the main supporters of this theory.

Idealist Theory of Rights

The idealistic theory of rights is also designated as the personality theory. This theory says that rights are essential to man's internal and real development. This theory emphasizes the creation of those conditions, which help man to reach the fullest stature of his personality.

Perfection of human personality is the end to which all rights are directed and subordinated. In other words, right to personality is man's fundamental right and all other rights are derived from it. This theory appeals to the moral and democratic mind of man, as it relates rights to morality rather than legality. Secondly, it does not subordinate the self - development of man to the social whole. Both act and react upon each other. Immanuel Kant, T.H.Green and Bosanquet are main supporters of this theory.

Social Welfare Theory of Rights

The advocates of the Social Welfare Theory hold that rights are conditions of social welfare. They are the creation of society, and law, customs, traditions and the natural rights "should all 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. Take, for example, the right to speech. It is not an absolute right. It is limited by the social needs of a coordinate body. Similarly, the right to property does not mean the right of the few to prosper at the cost of the many.

The Utilitarian's, Bentham and Mill, are the real exponents of the Social Welfare Theory of Rights. They set up the principle of the greatest happiness of the greatest number and made it the criterion of utility. But utility, they believed, should be determined by considerations of reason and experience.

Laski, too, accepts utility as the basis of rights, though he gave to the term a meaning which is consistent with the modified conditions of his times. He holds that the test of a right is utility, and the utility of a right is its value to all the members of the State. The claims, he says, which the State must recognize "are those which, in the light of history, involve disaster when they are unfulfilled." Rights are not independent of society, but inherent in it.

The Social Welfare Theory of Rights has much to commend. But one cannot say what social welfare actually means. Does it mean the greatest happiness of the greatest number, majority interest, or what is today understood to be the common good? In fact, much political wrong has been done during recent times to the individuality of man in the name of social good. The individuality of man and his rights have very often been sacrificed in order to extol social good in the name of social



expediency. A social system which discounts individual personality and glorifies the common interest of society cannot continue for long. It is sure to provoke opposition from that section of society whose personality is crushed and rights frustrated.

Utilitarian Theory of Rights

Utilitarianism, as a family of philosophical theories, has been the most powerful and pervasive approach in the development of economics since the marginalist revolution. Utilitarianism was developed in the 18th century and then fully articulated in the 19th, designed to do good to the world not from the point of view of the Christian church or any religion, but rather from a secular point of view based on rational thought. It was conceived as a way to think about the legal system, and to improve it, on the basis of a single coherent rational and acceptable principle, that of the utility principle. It hence may be used to think about the constitution, about civil and penal laws, and, last but not least, any kind of policy judgment whether economic or social.

Economics has endorsed some important aspects of utilitarianism ever since the 18th century. In particular, welfare economics, and hence virtually every public policy recommendation formulated by economists, has for years been influenced by utilitarianism in some manner, albeit not always explicitly recognized. The efforts to get away from utilitarianism may even explain aspects of the evolution of welfare economics.

Utilitarianism is not only a moral and political philosophy, however; it is also a philosophy of action. As an ethical theory, it sets down what individuals should do to improve their own situation, and what should be done by every individual and by the collectively to improve collective welfare. As a theory of action, utilitarianism claims that individuals seek to promote their own utility, such that utility appears as both an explanation of and a guide for human action. Notice that utilitarianism is sometimes claimed to be rooted in a consideration of strictly selfish actions, with no attention paid to the utility of others: but this is merely an exaggerated caricature of the theory^{xi}.

Anti-Utilitarian Theory of Rights

The central criticism of utilitarianism is that it sets as its priority the well being of the majority. Little thought is given to minorities or individuals within a state. The preferences of individuals are not represented by the majority and who may, in consequence, be severely disadvantaged, deprived of their rights. Two of the most notable critics of utilitarianism are Dworkin and Nozick. To them, the minimal state is not only based on certain moral precepts but is itself one of those moral precepts.

Consideration of anti-utilitarian jurists cannot be deemed complete without a brief examination of Rawls Theory of Justice. In his work, he argues that justice is a way of distributing the rights, duties benefits and burdens among individuals within society. He further posits, as distinct from utilitarians, that every person is inviolable and that even the welfare of society cannot displace this inviolability^{xii}.

Legal Realist Theory of Rights

The Legal Realist Theory of Rights is of recent origin. It is mainly originated in United States of America with the expansion of regulatory activities followed by President Roosevelt's "new deal policy". A group of jurists such as Karl Llewellyn, Roscoe Pound and others discussed the point as 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 values. So, human rights, as they argue, are nothing but a manifestation of an ongoing process rather a theoretical debate. 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 actions, so far enacted upon the society^{xiii}.

Marxist Theory of Rights

The first person who talked about exploitation of labourers or violation of workers' right is Karl Marx. He, arguing from a scientific basis, claimed that the alleged law of nature was both idealistic and historical. Hence, the claim by seventeenth and eighteenth century bourgeois revolutionaries to the effect that rights were both inalienable and imprescriptible was unsustainable and indefensible. Rights, Marx argued, were simply bourgeois concept and a product of bourgeois-capitalist society.

In Marxist theory, the essence of an individual is that of a social being who uses his or her abilities to satisfy his or her needs.



The true potential of human beings, in Marxist doctrine, can only be realized if they are enabled to return to their true nature as social beings. The motivating forces of capitalist development are profit and private benefits. Entrepreneurs are interested only in maximising their profit by lengthening the working hours or by replacing workers by capital. Marx suggested a planned economy, where everything is planned by a central planning agency. To him, a communistic form of society is better for greater economic growth, stability and happiness^{xiv}.

Philosophy of Human Rights

Contemporary view towards human rights stem from three basic philosophies: conservatism, liberalism and communalism. Our first political philosophy entailing a view about rights is conservatism. Extreme conservatism is called fascism or social Darwinism and based on the central belief of survival of the fittest. The most powerful are entitled to have rights, to get the benefits. This process eliminates the weak, the bad^{xv}. The view of the conservatism has to be taken into the account of measuring the human rights.

The word liberalism has certainly been used in more ways. Its central and historical meaning is a belief that the highest good or value is individual well-being, and that personal well-being is found freedom and equality. Liberals believe that moral man and a moral society can be developed or at least a better man and society^{xvi}. There are two primary foundations for the liberal school. Each has had an impact on modern human rights. The first of these is the natural law school. The natural rights advocated that humane have inalienable rights. The second foundation of liberalism is utilitarian thinking. The main concept of utilitarian thinking is human happiness and welfare through freedom and equability.

The third philosophy is communalism, which advocates that rights stem from membership in a community or group. Individual from solid group. It is fact that which governs their rights. One wing of communal school of thought is Marxist.

Conclusion

The analysis of different theories of human rights developed by very important thinkers shows that though there are differences of opinion in defining the term 'Human Rights' are uniform in emphasising the fact that there should not be any human rights violation. The study found that the human rights theories are classified in different ways, which attempts to explain the different dimensions of the human rights. The human rights theories have been developed either as a reaction to earlier ones or as the refinement to the existing jurisprudence on human rights. The study identified that the there is no single theory which can be adequately explain the origin and nature of rights. Each theory of human rights is a product of time. There is some elements of truth in the each theory. A good theory of human rights should take in to consideration. The study further identified that theory of human rights are still on the way to development for the people.

ⁱ <http://www.businessdictionary.com/definition/theory.html>.

ⁱⁱ Dr. L.Slomon Raja, Dr. M.Gandhi, *Legal Research and Methodology*, Prabha Publishers, Pondicherry, 1995, p.15.

ⁱⁱⁱ S.R. Myneni, *Legal Research Methodology*, Allahabad Law Agency, Faridabad, 1997, p.78.

^{iv} *Ibid*, p.25.

^v N. D. Arora, S. S. Awasthy, *Political Theory and Political Thought*, HAR-ANAND Publications, New Delhi, 2007, p.215.

^{vi} Feldman, David, *Civil Liberties and Human Rights in England and Wales*, Oxford University Press, 2002, p.5

^{vii} 1996 Cr.L.J., 108 (J)

^{viii} *The Protection of Human Rights Act, Gazette of India, Extra, Part II, Sec 1, 10th Jan.1996*, pp. 1-16.

^{ix} *Course material, Human Rights Theory*, Periyar University, Salem, 2009, p.70.

^x *Ibid*, p.106.

^{xi} Antoinette Baujard. *Utilitarianism and anti-utilitarianism. Working paper GATE 2013-32*, 2013, p. 2.

^{xii} http://shodhganga.inflibnet.ac.in/bitstream/10603/657/10/10_chapter%203.pdf

^{xiii} Arun Ray, *National Human Rights Commission of India; Formation, Functioning and Future Prospects*, Khama Publishers, New Delhi, 2004, p.48-49.

^{xiv} http://shodhganga.inflibnet.ac.in/bitstream/10603/657/10/10_chapter%203.pdf.

^{xv} *Course material, Principles and Theories of Human Rights*, Indian Institute of Human Rights, 2003, New Delhi, p. 190.

^{xvi} *Ibid*, p.192.