

Human Rights: Major Conceptual Debates

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ABSTRACT

The recognition, enjoyment and violation of human rights have always been in debate both at conceptual and empirical domain. The concept of human rights, since its inception, has raised many legal, moral and political questions which have kept political philosophers, leaders, legal experts, activists and common people engaged in answering them. In this paper, attempts have been made to throw some lights on important normative debates in the human rights discourse which of course help us to understand the theory and practice of human rights.

1. Introduction

The concept of 'human rights' was conceived after Second World War and since then relentless efforts have been made at a global level to make them universal principles across all societies. The landscape of rights is dotted with different theories and interpretations. The ideas of rights have developed not as mere intellectual diversions but in reaction to the reality of human sufferings and to acts of injustice perpetrated by state against individuals or some human beings against others. In our own age the idea of human rights owes much of its popularity to people's revulsion against the grotesque evils like gas chambers, xenophobia, war crimes, torture, violence and atrocities against women, religious persecutions perpetrated by some twentieth century political regimes. The importance of human rights is gaining a space in the mainstream of socio-political discourses along with the growth of liberal democracy and human consciousness for individual dignity, liberty, economic equality, social justice and group identities. In the present days, issues of human rights are as much the concern of legal luminaries as of politicians, legislators, administrators, judges, police, lawyers, governments, NGOs, national and international institutions and so on.

The post second world war concept of human rights carries a special significance due to the context of its origin and the moral and political justifications developed to defend these rights. The most distinctive dimension that the concept of human rights added to the discourse of rights is that it made rights universal. Michael Freeden said "human beings having rights is not the same as they having human rights" (Freeden, 1991). Being product of this century, this very key concept denotes a pre-eminent notion of rights. Another scholar Tom Campbell rightly observed, "traditional theorists who restrict their analysis to positive rights abandon the analysis of moral or natural rights because they regard the latter as intuitive, non-determinable and metaphysical, and hence, unhelpful" (Campbell, 1983). Human rights, on the contrary, are primarily based on the philosophy of moral and natural rights. They, in fact, are the most basic rights pertaining to what is essentially human, while other categories of rights are more specific, limited and normally derivative.

The prefix 'human', to the concept of 'rights', refers to the humankind in totality and make these rights universal. In

the present idea of human rights, every human being is equal in terms of enjoyment of certain basic rights. The notion 'human' in this context may be broadly understood at three inter-related levels. *Biologically*, it includes man, woman and people having different sexual orientation; old people and children; abled and disabled; strong and weak – all types of human beings irrespective of their biological standard. *Socio-economically*, it encompasses all people within a particular society. All segments and sections of the society irrespective of their socio-economic status based on race, religion, language, culture, sex, wealth, place of birth etc. Politically, it refers to all human beings of all countries, nations and societies of the planet irrespective of and ignoring the political boundaries of the states, ideologies and nationalities. Thus, the range of 'human' in 'human rights' is extended to the whole humanity without any pre-determined qualification (Tripathy, 2019).

Human rights constitute those rights, which ought to be enjoyed by all human beings of the world irrespective of their biological, social, economic and political status. One does not need any pre-qualification or fulfills any pre-condition to enjoy these rights other than being born as a human being. In the words of Subhash C. Kashyap, "the fundamental norms governing the concept of human rights are that of respect for human personality and its absolute worth. Human rights may be said to be those fundamental rights to which every man or woman inhabiting in any part of the world should be deemed entitled merely by virtue of having been born as a human being" (Kashyap, 1978). There is considerably less agreement among the moral and political philosophers as to what these human rights are, what justifications are behind them and what the order of priorities among them is.

2. Major Conceptual Debates

The concept of human rights encompasses wide range of rights having different meaning and significance. What are human rights? Which rights are more important? Which rights should be given first priority? Are human rights universal? Are group and collective rights constitute a part of human rights? These are some of the questions that political philosophers and legal experts have been debating for a long time. This paper makes an attempt to discuss some of these debates.

3. The Universal Nature of Human Rights

The most distinctive feature of post second world war concept of human rights is its universality. As discussed before, it is argued that, unlike the past, certain rights are universally prevalent everywhere on this earth. Every human being irrespective of their social, cultural and political setting is entitled to all human rights. Those who believe that human rights are universal in nature are known as 'Universalists'. They are of the view that these rights are moral in character; so, the entire mankind is entitled to them and people do not require any qualification to enjoy them.

The universal character of human rights as advocated by the 'Universalists' faces its greatest challenge from the 'Cultural Relativists' (Freedon, 1991; Symonides, 1998; Langlois, 2016). The question of universality of human rights is being debated by two different schools of thought- 'Universalists' and 'Relativists'. While the Universalists emphasize the universality of human rights and their applicability everywhere, the Relativists stress on diversity and differences. Relativist theorists such as Renteln and Donoho argue that human rights are based on morality which again is justified in a specific environment or society. Since morality differs from society to society, we find different practices of human rights in different societies. The cultural relativists claim that truths and values are relative to particular culture (Bouandel, 1997; Ackerly, 2016). They often criticize the human rights doctrine for failing to respect different cultural, religious and philosophical traditions, and therefore, ultimately, failing to respect or recognize peoples' identities (Langlois, 2016).

The universality of human rights versus cultural relativism is the most controversial debate in recent times. Human rights scholars (Hoffman & Graham, 2015) supporting cultural specificity argue that the present concept of human rights is a product of western society and therefore don't include the values of non-western societies and secondly they spread western imperialism. These rights, as a result, find it difficult to be implemented in many societies which have a cultural system and values different from post-industrial western societies. There are strong resistance come from many conservative and traditional societies to the idea of human rights that were developed in west at a particular historical juncture and imposed on rest of the world.

Norberto Bobbio (Bobbio, 1996) questioned the development of absolute fundamental principles to justify the human rights for obtaining wider recognition. According to him, although human rights are desirable, i.e. an objective worthy of pursuit, they are not recognized everywhere and to the same degree. Since human rights have been modified and continue to be modified in changing historical circumstances, there cannot be any absolute fundamental principle of human rights. Therefore, he suggests that these rights are not fundamental by their nature. Which appears to be fundamental in a given historical era or civilization is not fundamental in other eras or civilizations. Human rights, to him, are heterogeneous. Different principles are formulated to justify different rights.

After the Vienna Conference (World Conference on Human Rights, 1993), however, there are indications that at least certain human rights have gained universal acceptance. Almost all governments, whatever their ideological or cultural background, have accepted the universality of certain human

rights. On the other hand some human right theorists believe that 'Universality' and 'Cultural Specificity' are fully compatible notions. Universality and Specificity are two organic, interrelated aspects of human rights, which do not exclude each other but co-exist and interact.

4. Relationship between First and Second Generations Human Rights

One of the vital questions that, for some time and for some scholars, have been in debate is; can socio-economic and cultural rights be considered to be part of human rights? Few eminent human right theorists (Gould, 1988) like Maurice Cranston and R.S. Downie, have argued that human rights should be limited to Civil and Political Rights (first generation rights) and should not include Economic or Welfare Rights and Social Rights (second generation rights). Cranston (Cramston, 1973) argues that the 'second generation rights cannot possibly be accepted as human rights and its inclusion hinders the protection of the traditional human rights. He has developed a three-fold test upon which the authenticity of human rights is judged. The criteria include *practicability*, *paramount importance* and *universality*. *First*, he argued that the economic and social rights are not practicable since they require resources that are beyond the capacities of states to provide. By contrast, he holds that the traditional rights to life and liberty require only forbearance from action on the part of state and thus are practicable. *Second*, in his view, only the rights to life and liberty are of paramount importance. *Third*, he claims that human rights are universal. He argued that it is only the 'first generation rights'—right to life and liberty—can be universally protected while the socio-economic rights differ from society to society since their fulfillment depend upon the adequate resources (Cranston, 1962). It is held, generally by the liberal thinkers, that economic and social rights require the state to provide positive benefits and this would lead to increased state action and inevitable interference with an individual's liberty. Because of these reasons the second-generation rights are not included in the human rights (Gould, 1988).

On the contrary, human right theorists like Alan Gewirth, Richard Wassenstom, Henry Shue and many others, include socio-economic and cultural rights under the ambit of human rights. Gewirth and Wassenstom argue for the right to well-being as a human right; where such well-being includes economic or welfare consideration. Similarly, Henry Lesser and Peter Taylor argue for subsistence or for survival as a basic human right (Gould, 1988). This school of thought believes that the 'second generation rights' are as important for human being as the first generation. The socio-economic rights and civil and political rights are not independent or contradictory to each other; rather they are related to each other and interdependent. In reality the protection of civil and political rights in fact requires the realisation of social and economic rights. Freedom from the socio-economic exploitation and domination should be recognised as a right and that is necessary for the enjoyment of civil and political rights (Gould, 1988). A moral and legal claim is made by majority of human rights scholars and activists that the 'right to life' includes the right to subsistence and healthcare, in addition to security. Carol C Gould advocates that the most important human right is the 'right to have positive freedom' or 'right to self-

development' that includes both generations of rights (Gould, 1988).

This controversy has ended with the end of cold war and collapse of communism. Recognition is accorded to both sets of rights in all societies. Cyrus Roberts Vance, the American Secretary of State, in his address at the University of Georgia on 30th April, 1977 mentioned three categories of rights that come under human rights: *First*, the right to be free from governmental violation of the integrity of the person; *Second*, the right to the fulfillment of such vital needs as food, shelter, health care and education; and *Third*, the right to enjoy civil and political liberties. He further said, "Our policy is to promote all these rights. They are all recognized in the Universal Declaration of Human Rights' a basic document which the United States helped fashion and which the United Nations approved in 1948. There may be disagreement on the priorities these rights deserve. But I believe that, with work, all of these rights can become complementary and mutually reinforcing"(Vance, 1977).

Many normative as well as operational questions relating to universality, inevitability and classification of human rights seemed to have been resolved, at least as a principle, at the Vienna Conference, 1993. In the final Declaration of that conference it was stated; all human rights are universal, indivisible, interdependent and inter-related. With the change of time and condition, in the present day all the above human rights are not only recognized but also are given equal importance both in developed as well as developing societies, leading to a gradual end of the above debates.

5. Status of Third Generation Human Rights

The question of inclusion of the rights of the 'third generation' into the gamut of human rights has created some ambiguities surrounding the concept. It is advocated by many scholars that these rights refer to something vague and ambiguous and they are no more than slogans and therefore, should not be included in the list of human rights (Bouandel, 1997) while, on the other hand, there are strong arguments in favour of their inclusion into the array of human rights. Those who consider these rights as human rights argue that they create the required pre-conditions necessary for the enjoyment of most fundamental right i.e. the 'right to life'. For example, the right to peace and the right to live in a clean environment are very much a part of the "right to life" (Gould 1988). Therefore, the third generation of rights can be considered as inalienable human rights. In fact, the third-generation human rights have definitely widened the scope of human rights.

In the present days, rights have been claimed to things that were not generally claimed as rights in the earlier days. Changes in moral and political thinking have affected people's ideas about the content of human rights. Peter Jones (Jones, 1994) points out that the idea of natural or human rights has remained constant; all that has changed is people's thinking about what individuals have natural or human rights to?

6. Hierarchy of Human Rights

The classification of human rights and making a hierarchy of rights on the basis of their priority by few human rights scholars has generated not only confusion at a level of normative understanding but also at the implementation

process. It is advocated by many scholars that some human are more important than others; so they deserve more attention and priority. Scholar like Maurice Cranston who advocated the criteria of 'paramount importance' strongly believes that civil and political rights are more important than social and economic rights and, therefore, only the former constitutes human rights (Cranston, 1962).

Similarly, authors like Gewirth, Shue and Plant identify a set of 'basic rights', which are the necessary conditions for any human action whatsoever. They regard all other rights as 'non-basic rights' (Gould, 1988). This division of human rights into "basic" and "non-basic", is also referred to as "core and periphery" rights respectively. The core or basic rights are those rights that are indispensable for leading a life with human dignity and therefore, need absolute protection. They include the right to life, freedom from torture and inhuman treatment, etc. (Baehr, 1999).

Some scholars as well as international human rights law characterise some rights as 'absolute'. Certain human rights have been considered so important that they cannot be limited or suspended under any circumstance or state of emergency. These are classified as 'absolute' rights while other rights are 'non-absolute'. Absolute rights cannot be limited for any reason. No circumstance justifies a qualification or limitation of these rights. Such rights cannot be suspended or restricted, even during a declared state of emergency.

Article 4(2) of the International Covenant on Civil and Political Rights (ICCPR) provides the following list of 'absolute rights' on which no derogation (power to suspend any rights or to put limitation on them) is permitted:

- right to life (art 6)
- freedom from torture or cruel, inhuman and degrading treatment or punishment; and freedom from medical or scientific experimentation without consent (art 7)
- freedom from slavery and servitude (arts 8(1) and (2))
- freedom from imprisonment for inability to fulfill a contractual obligation (art 11)
- prohibition against the retrospective operation of criminal laws (art 15)
- right to recognition before the law (art 16)
- freedom of thought, conscience and religion (art 18).

The above division of rights is often questioned by the human rights theorists and practitioners of contemporary time. In the contextual reality, it is very difficult to judge whether one set of rights is more important than the other because satisfaction of one set of rights depends upon the other. Is it possible to claim that 'rights to life' is more important than 'rights to food'? The importance of a particular right is very flexible depending on specific condition of an individual which again varies from society to society. Secondly, many human rights are derivative from one another. The so called "basic rights" in fact do not stand in isolation from 'non-basic rights'. They are mutually supportive to each other. Sometimes the realisation of "basic rights" may require the exercise of 'non-basic rights' (Gould, 1988). Therefore, it is neither empirically possible nor normatively reasonable to claim that one human right is more important than other.

The concept of human rights developed an integrated approach to rights. The separation of rights into different groups and giving priority to one set of rights over another defeats the basic purpose of human rights, i.e. the life and

development of human being with dignity. Therefore, it is widely accepted that human rights are indivisible.

7. Negative vs. Positive Rights

The traditional division of rights into 'negative' and 'positive' has lost its ground in the contemporary human rights discourse. The civil and political rights as generally held to be negative rights; whereas the socio-economic and cultural rights are considered to be positive rights. This division is based on two factors. *First*, the former prohibits the state to take certain actions that leads to violation of these rights whereas the later demands the positive action of the state for the enjoyment of socio-economic rights (Langlois, 2016). *Second*, violation of the first category causes harm, whereas non-enjoyment of the second category is merely a failure to meet demands or provide assistance. YoucefBouandel (Bouandel, 1997) advocated that if harm is the bio meter whereby the nature of rights is to be judged, then failure to provide food, medical care and shelter will cause harm, even more than violating freedom of speech and of association. Secondly, he also argues that positive action of state is required for the enjoyment of both categories of rights. Now it becomes clear that all rights whether civil and political or social and economic are positive in nature in the human rights tradition. Carol C Gould (Gould, 1988) has advocated that the "right to life", as generally held, is a negative right because it contains the "right not to be killed". But she believes that the "right to life" includes other benefit (positive) rights: the right to the means of subsistence; the right to peace and the right against avoidable environmental harm or risk.

8. Individual Rights and Collective (Group) Rights

The modern notion of human rights which is grounded on the individualistic liberal tradition, primarily grants rights to individuals. Though, UDHR contains few collective/community rights but mostly it is based on the logic of individual rights. The classical liberals and some right-libertarians believe that liberal state or government identify, protect and enforce rights of the individuals. The American Declaration of Independence states that "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights..." These words support the idea that rights are bestowed not by governments, but by God; not to groups, but to individuals. Ayn Rand, developer of the philosophy of objectivism, asserts that a group, as such, has no rights. She maintained that only an individual can possess rights, and therefore the expression 'individual rights' is a redundancy, while the expression 'collective rights' is a contradiction in terms. In this view, a person can neither acquire new rights by joining a group nor lose the rights which he does possess. Another proponent of this philosophy, Jordan Peterson situates individual rights as in dialectical opposition to collective rights; suggesting that the two are mutually exclusive, and that philosophies and political theories that value collective rights do so at the expense of the individual and their rights.

On the contrary, those contemporary political scientists or legal experts who support group/community rights suggest that the above arguments are based on a false-dichotomy that implies individual and group rights are mutually exclusive, separate and opposed; instead they advocate that the both are

inherently connected and interdependent. The promotion of individual human rights alone is not enough. There are quite a few situations or problems in our society which can only be solved by granting rights to collectivities. Carol C Gould (Gould, 1988) firmly believes in the fact that though human rights are grounded in the individual and not in the society but the social relations of co-operation or communality among individuals or groups of individuals cannot be totally ignored. The group can survive and protect their culture, language and religion only when they are bestowed with certain rights collectively such as rights to language, culture and religion and so on.

A group right refers to such rights which are held by a group collectively. In the doctrine of 'group right' it is the group that is the right-holder. It claims that right is not confined to one individual rather it is possessed by all members of the group or some time all members of the society, for example, the rights to clean environment. Some proponents of group rights consider 'right-holding groups' as moral entities in their own right, so that, the group as a right holder enjoys a status similar to an individual while some other group rightists does not give groups such independent standing, but consider group rights as rights that are shared in and held jointly by all members of the group. However, the claims that 'group rights' and 'individual rights' are complementary rather than conflicting to each other and some group rights are human rights have gradually being recognized in the contemporary time.

The 20th Century has witnessed the movement from individual rights to the acknowledgment of group rights. Some group rights are included in the 'third generation of human rights' like rights to self-determination, to development, to a clean natural environment, cultural heritage and so on. In fact, there has been a growing acknowledgement of these rights in recent years (Baxi, 1998). In some instances, it has been observed that individual rights have been superseded by the group rights and along with this the promotion of group identity over individual identity has been encouraged legally and politically. The preeminence of the group over the individual has been a present-day reality. One of the basic principles of conventional discourse of rights which believes in the acknowledgement and protection of individual rights is now giving way to devaluing individual rights in favor of collectivist group rights.

9. Conclusion

Though human rights are purportedly universal and self-evident, scholars struggle to justify their existence, enumeration, and international enforcement. Irrespective of the metaphysical and epistemological foundations for the existence of human rights, they have become an integral part of global politics and constitutional system of every modern state. Efforts to develop absolute fundamental principles to justify the human rights for obtaining wider recognition in the last few decades are commendable. However, ironically these rights are not enjoyed everywhere and to the same degree although human rights are desirable; an objective worthy of pursuit.

Concern for human rights, today, may be manifested in two ways; first, the identification and acceptance of human rights in principle and second, how these universally accepted rights and values are protected and implemented in true spirit.

Now the world is moving in the direction of protection and promotion of human rights rather than their recognition. It is evident world over that the critical problem facing our times is not one of finding fundamental principles for human rights but that of protecting them. We should develop a general consensus over its validity. Norberto Bobbio rightly said "The problem we are faced with is not, in fact, philosophical but

legal, in a wider sense, political. It is not a matter of knowing which and how many of these rights there are; what their nature is and on what foundation they are based, whether they are natural or historical, absolute or relative, it is a question of finding the surest method for guaranteeing rights, and protecting them from continuing violation in spite of all the solemn declaration" (Bobbio, 1996).

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