

**THE THEORY AND PRACTICE OF HUMAN RIGHTS: THE NEED
FOR INTEGRATION OF THE TWO DIMENSIONS
BENULAL DHAR**

Human rights are a buzz-word in contemporary social and political life. Hardly a day passes without mention of human rights violation in the media. When horrible and shocking incidents of human rights violation are reported, we cannot remain indifferent to them. We ask ourselves and reflect on the following:

How should we think about these events? What should we do about them? What is the relationship between these two questions? In particular, what is the relationship between the theory of human rights and the practice of international human rights law? We are troubled not only by injustice, but also by theoretical scruples about the universality of any given view of injustice and human rights as a basis for intervention. The relationship between the theory and practice of human rights is problematic.¹

The concept of human rights involves problems that are, on the one hand, related to philosophy or theory and on the other, to activity or practice. Both kinds of problems – theoretical and practical – about human rights would survive forever. For, the theoretical disputations relating to human rights like old habits would die hard, on the one hand and since there is presumably *no* respite for men in sight from injustice, the human rights activism seeking justice and good life would continue on the other. But the problem is that both a philosopher and an activist generally tend to accomplish their respective task by giving the other a low priority. On the one hand, a philosopher engaged in reflections on the nature, content and justification of human rights often ignores practical issues relating to human rights and an activist under the pressure of rescuing his fellow citizens from injustice often puts philosophical questions in abeyance. In our view, both the theoretical or philosophical reflections and the activism related to human rights must be integrated with one another. For, each of the dimensions receives its sustenance from the other to work for humanity. The objective of this paper is to argue for each of the two dimensions and for the need to integrate them.

I

Let us first argue for the need to theoretical or philosophical reflections on human rights. In the first place, the primary task of any philosophical approach to human rights, for that matter, to any topic, is to lay bare the meaning of the concept

itself, which at its first encounter with us is likely to remain obscure and unintelligible. Philosophic endeavour makes explicit what is implicit, and expose what is covered up. So the understanding of human rights from the philosophical perspective means to become clearly aware of the vague and unconscious assumptions underlying the idea, which are operative in our lives and guide our practical choices and actions relating to it. It is essential that we discover these assumptions lying behind the concept of human rights if we do not want to be driven *blindly* in our effort to implement the idea in the social and political life. In short, it is the expository effort of philosophy that would clarify the presuppositions of human rights conception, and thereby it would deepen our understanding of its truth.

In the second place, many of us are not free from prejudices and misconceptions about the concept of human rights. It is needed that the philosophical theories of human rights are to be submitted to critical examination in order to dispel all prejudices and misconceptions about the notion, and ensure that its application does not become pernicious to our social and political life. The philosophical understanding of human rights would make it clear that this idea is *not* a myth that has come down to us as part of social customs and mores but has a strong rational foundation of its own. Philosophy in its characteristic approach takes into consideration the arguments both for and against the conception and thereby identifies the strength and weakness that the concept of human rights possesses in terms of its application in society.

In the third place, the philosophical study of human rights takes a comprehensive view of the world rather than a parochial one while in search of the truth of a conception. It makes an attempt to understand the idea in its multiple dimensions. In other words, what it means to have the rights of man from the social, political, moral, and other perspectives? is the question that engages a philosopher. The philosophical treatment enlightens our common sense idea about it as well as broadens the overall human perspective on the subject of human rights. It also makes people realise how emotionally attached they are to the belief in the idea of human rights when it is brought under the purview of philosophical scrutiny.

In the fourth place, the person who is concerned with liberating his fellow-beings from tyranny and exploitation, he may find it useful to pause for a

moment to ponder over such questions as: What is a right? What is a human right? What is the nature of human rights? Are they natural or acquired? in order to equip himself with some conceptual apparatus which may guide him to his practical actions. The rational and conceptual apparatus, by means of which philosophy carry on its activities, not only provides us with the knowledge of the world suffered by violence and injustice but also equip us to *act* in it. This rational capacity of action having been oriented towards society seeks to transform the social order by actualising self-evident ideals like rights, liberty, equality and fraternity.

In the fifth place, the concept of human rights has certain *contents*. In order to make clear what human rights are, it is not enough to say that they are possessed of by humans by virtue of their being humans only irrespective of any distinction, such as race, sex, colour, language, religion, nationality or other status. It is also necessary to understand and analyse what they are, that is, both traditionally recognised rights, such as right to life, liberty and possession and different other kinds of recently evolving rights, such as the rights to health care, to social security, to fair wages, to a clean environment, to smoke-free offices, to abortion, to child-care, and to sick leave. In this context, some other rights too get recognition, such as the rights of the poor as against those of the rich, parents against children, women against men, citizens against the police, and the list goes on and on. The questions such as the following arise: how are we to decide which interests deserve the protection of human rights in one's own society? Or how are we to decide which rights are to be treated as human rights to which all human beings are entitled to enjoy? In order to answer these questions, the entire domain of rights, that is, the *contents* of rights has to be looked into in order to reach a consensus at international level, although there are such issues relating to human rights on which to reach an agreement is quite impossible.

In the sixth place, one of the crucial functions of philosophy is to provide justification for any belief. And in this case that human beings should be treated in certain ways involves various perspectives in understanding the human individual and his relationships with his fellow-beings, and it is only the philosophical approach that can address the various issues relating to the nature of human beings, and provides justifications for the possession of inherent and inalienable rights. But this not an easy and straightforward issue. For, historical and cultural circumstances powerfully

condition one's view of human rights and its justification. The diverse conceptions of human rights reflect the differing social, political and economic values of different societies. Hence there is no "best" view of human rights. Each is valid from its own valuational perspective. But people of each culture need to argue from its own viewpoint in defense of their view on human rights, which is in keeping with the ethos of their culture and to be tolerant of the moral beliefs and ideas of other cultures about human rights.

In the seventh place, philosophy has rich resources to offer to any policy maker. In order to adopt human rights as a public policy in social and political life, it is imperative that it passes the test of philosophical scrutiny. A policy, for example, aimed at promoting the freedom of expression would need not only to *recognise* it as a human right but also to create awareness and circumstances in which they can speak freely without penalty. Philosophy is an essential part of equipment of every person who needs to deliberate while formulating public policies or just think clearly in areas involving debates and issues. As Martha C. Nussbaum has rightly pointed out,

that philosophers are badly needed in academic deliberations about public policy, as critical scrutinizers of arguments and as obsessive pursuers of the foundational concepts and questions. For here, if anywhere, it is important to seek rigor and conceptual clarity.²

In the last place, when a human rights activist fights for rescuing his fellow-citizens from tyranny and exploitation, he takes a normative stance to justify his actions. He not only explains the pathetic and distressing conditions of those suffering but also disapproves of it from ethical point of view. He takes typically philosophical position on a variety of contested issues in connection with the particular incident of tyranny and exploitation, though usually *without* realising that he is doing so or arguing for the position taken. Thus an activist is required to argue and take a stand to put forward his case and this is philosophical in nature. Generally, human rights activism demands that one should get down to business immediately, that is, rescuing people suffering from injustice. But philosophy is in no such hurry; it does not move to the practical too quickly. Rather, it concerns itself with conceptual subtleties, the articulation of the distinctions and systematic arguments and thereby it prepares the ground for carrying out bottom-line business, that is, to deal with the concrete cases of human rights violation with confidence and determination aided by philosophical reflections.

II

It is worthwhile to argue in favour of the view that philosophy needs practice. In the first place, human rights are an operative and action-demanding notion, for it is meant for application in the social and political life to bring about change in social and political order. It is the common phenomenon in our society that people are inflicted by tyranny, arbitrariness, repression, deliberate deprivation, constant apprehension, etc. and it is to reduce the undeserved and unbefitting pain and suffering of people and to facilitate them to live with dignity in society that human rights are invoked. The philosophical thinking on human rights throws light and shows the path as to how to proceed with the instrument of human rights to benefit and help people to lead a dignified life in society. Thus ultimate utility of human rights lies in changing peoples' lives free from pain and suffering and thereby enable them to realize their potentiality.

In the second place, the philosophical reflection is not possible in a vacuum. It must be based on some facts and experiences, in the present case, on the particular incidents of tyranny and exploitation that actually occur in the lives of people whereby human rights are violated. It is a fact that people always suffer from injustice caused by state or other agents. The philosophical reflections on these countless incidents of tyranny and exploitation gave rise to the "conceptual device" like human rights in the modern world. It is in order to protect people from endless suffering that the concept of human rights has evolved. Human rights are a sort of language through which protest against tyranny and exploitation is voiced today all over the world. Presumably, there is no respite from human suffering, so the reflections on the particular incidents of suffering will lead human mind to reflect and devise the ways and means of preventing further occurrences of human rights violation in future. The facts of human suffering prompt philosophers to reflect and thereby invent newer conceptual apparatus in the form of human rights as antidotes and preventive measures. Again, Martha C. Nussbaum writes,

It (philosophy) provides the type of foundational and systematic understanding that can guide prescriptions and laws. Philosophy has to be grounded in experience and concerned with practice, or it will rightly be dismissed as irrelevant.³

In other words, philosophical reflections on human rights sustain its life by grounding itself on the experiences of the incidents of tyranny and exploitations.

Philosophy must have commitment to reality, that is, its concerns with endless human suffering but that does not entail that philosophy would abandon its characteristic nature of being abstract, theoretical and being concerned with conceptual subtleties about human rights. In order to contribute to the practical concerns with human suffering, philosophy prepares an activist to understand the situation and accordingly help him to move forward to face it without giving up its analytical prowess.

In the third place, whatever the theoretical issues and arguments about rights, they in fact play a crucial role to take decisions on practical social and political issues at national and international level. There are many social and political issues which not only raise philosophical questions but also create occasions to ponder over crucial practical issues which demand their settlement in terms of human rights. For example, there are a large number of people who argue that the issue of abortion entails the right to a human foetus to be born, that is, it has the right to life, on the one hand and on the other, many people are not willing to give the human foetus the status of a human being and hence they, in some exceptional cases, demand abortion.

In the fourth place, human rights are intended to regulate our collective behaviour by prescribing as to how we should behave with one another and accordingly shape the future of our society. In this connection, William Edmundson writes,

The concept of rights is a *practical* one, and we must not lose sight of this central fact about rights: By their very nature they have a bearing upon how we are to conduct ourselves and order our affairs.⁴

As the society is the web of complicated social relationships, one's behavioural relationship with his fellowmen cannot be fixed forever. The application of human rights is intended to guide and control the human behaviour and thereby strives to enhance our well-being. What matters, in this connection, is how they do so in practice and not only philosophically.

In the fifth place, it is true that theoretical or philosophical analysis of rights makes us understand the nature, content and justification of them and decide as to which rights are to be treated as human rights. But this understanding and decisions are not done once and for all; they require repeated reflections and threadbare analysis for deeper understanding of their truths. This can be done better by applying the present understanding and decisions to specific cases. In other words, the human

rights theories can be tested only when they are applied to practical cases and thereby they get further opportunity to come under theoretical or philosophical scrutiny to become the efficient instruments to prevent injustice in the lives of people. In other words, while applying the idea of human rights to specific cases, we can understand the problems that may theoretically crop up for further reflections. And ultimately, the back and forth from theory to practice and *vice versa* makes human rights an competent conceptual mechanism to regulate human behaviour in society. Philosophical or theoretical reflections on human rights cannot get fulfilled unless it is carried out keeping in mind the practical plight of people living in society. That is to say, it is the practical human condition that sustains and guides our philosophical reflections on rights. Human predicament in society makes a philosopher reflect on various tactics and strategies, and make him better equipped to remedy the situation that is prevailing in a society.

In the last place, while one may be dismayed and suffer from despondency looking at the evil and scale of injustice in the world, only philosophical reflections on these facts in terms of human rights may enable us to show the way to reduce them as well as to keep before our eyes certain optimistic beliefs in order to see them practised in the foreseeable future. The great ancestors of every generation leave many noble and great ideas for their future generations, which are the results of their philosophical reflections. But history witnessed that some of these ideas could be implemented and some others could not be. It is the results of philosophical reflections on the present reality of human rights violations that give birth to these optimistic ideas and beliefs in our continued engagement with humanity. So the philosophical reflections must be combined with the idea of the plight of people in the world who fight for overcoming evil and injustice and continue to move towards prosperity and flourishing. In short, philosophers of human rights need to enter the public arena and present their grand and noble ideas to policy makers, development workers, lawyers and other people, so that these people carry on their respective activities following the norms of human rights.

Let us now summarise the main points, in conclusion. In our view, both the tendency of a philosopher of human rights to glorify his theoretical *reflections* and to belittle the role human rights activity, on the one hand and, and the recognition of the

superiority of human rights *activity* and giving a low priority to philosophical reflections are deplorable on the other. Both kinds of problems are inter-related and therefore seek each other's co-operation to serve a common purpose of humanity. While one is involved in activities relating to the prevention of human rights violations or to the fight for justice, he is in need of reflecting on the nature of human rights, the legitimacy of the application of human rights, the requirement of an ideal government, the nature of good life and such other issues. The human rights activities cannot go on without reflections on these issues. For, the philosophers raise path-breaking questions in view of innovative ideas and alterations in the context and temper of society and politics, and thereby they broaden our over-all human perspective on the subject. It is in this broadening outlook that human rights activities become able to sustain their life. The philosophical reflections ensure whether the application of human rights is pernicious or it is beneficial to social and political life. While a philosopher, on the one hand, is engaged in reflecting on the nature of good life and setting the standard of government that is capable of providing justice to the life of its citizens in terms of human rights, he also expects that some determinate actions are to be followed up to give effect to his ideas to peoples' lives on the other. For, the ultimate utility of human rights lies not in leaving the world as we find it, but in transforming it into a better, more just world. Thus philosophical and the practical dimensions of human rights supplement each other and so both the dimensions should get due importance to serve the humanity as a whole.

References:

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3. Ibid. p. 146.
4. Edmundson, William A.: *An Introduction to Rights*, (Cambridge: Cambridge University Press, 2nd Edition, 2012), p. 10.