

HUMAN RIGHTS AND DISCRIMINATION*

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I

The history of human rights draws upon religious, cultural, philosophical and legal developments in the 20th century in Western Europe and North America labour unions brought about laws granting workers the right to strike and minimum work conditions and regulating child labour. The women's movement gained the right to vote. Movement by racial and religious minorities have succeeded in many parts of the world; among them are the civil rights movement and recent identity politics movement.

Historically three revolutionary events in the west brought out the universal significance of human rights. Two of these took place in the 18th century namely, The American war of Independence and the French Revolution. The third event however, the Russian Revolution of 1970 added one further dimension of the rights of man of human rights. As consequences of the Russian Revolution emphasis was not only laid on economic and social rights, but the traditional political and civil rights were conspicuous. But a complete transformation of the meaning of political and civil rights was also equally conspicuous.

In its present form the concept of human rights is a modern development but the rudiments of it can be traced back to Locke. Locke spoke of the rights of men which were supreme. It was for the protection of these rights that the state emerged and it was in this function and capacity that lay the authority of the state, said Locke.

According to Thomas Hobbes, the most fundamental human right is the right to self-preservation. This right is the origin of most other human rights. John Locke shares this view and adds that the right to liberty, health property or possessions are the most fundamental human rights. No philosopher or no social activist is needed to tell us that the right to adequate food, right to shelter, right to proper health care, education are inseparably related to human existence.

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The concept of human rights has taken a new turn in its modern developments. The modern concept of human rights as safe guarded by international conventions came into vogue only after the end of the Second World War. The barbaric and heinous destructions which took place during the Second World War where tens and millions of human lives were lost under Nazism led to the arousal of the universal conscience of human kind. It resulted in the formation of a global organization namely, The United Nations in the year 1945. And with it came into being the idea that the protection of human rights should be a matter of international responsibility.

Under economic, social and cultural rights are put those rights which are concerned with the actual well being of the human kind in economic, social and cultural spheres and not only with protecting personal freedom. In this category are put such rights as right to social security, right to work and its minimum condition, right to proper standard of living, right to education, right to take part in all sorts of cultural activities in the society etc.

A remarkable progress in the development of the human rights concept is its institutionalization. And that occurred by the emergence of several international treaties with monitoring bodies attached to them. The important function of these monitoring bodies was to examine the reports submitted by the state parties in their presence. In these monitoring operations not only the adverse human rights situations but also the success of the different state parties in implementing the conventions towards the protection of human rights are brought to discussion. Of these international treaties with monitoring bodies' reference can be made to the convention of the elimination of all forms of Racial discrimination 1966, convention on the elimination of discrimination against torture, and the convention on the rights of the child 1989, and the international convent on civil and political rights 1977.

II

Human rights are regarded as universal in that all individuals have such rights. But long after these rights were proclaimed universal, they were in true enjoyed as 'privileges' by a small group of people. Gradually various equal rights, amendments showed the evolution of meaning through "All men like us are equal" into the modern egalitarian "All men are equal". Thus historically rights were at the

time of their adaptation merely a 'form' of politically universal rights – they were not really rights of all citizens i.e. of all persons within the body politic. The universality of human rights today, i.e. to say, to what extent they are recognised, respected, observed and realized in various countries, faces several challenges. The challenges posed are the expressions of some fundamental contradictions.

First, there is the contradiction between the humanistic aspect of the rights and their existence as the rights of the citizen. It is the bitter truth that in many places worldwide the setup of the national state and the establishment of citizenship go hand-in-hand with violation and intolerance against minority groups. In many states human rights idea co-exist with an equal treatment of people representing different racial, ethnic faith or other groups. Citizenship is a personal privilege, a factor of discrimination in contrast to the proclaimed equality and universality of human rights.

The contradiction between the humanistic aspect of claimed rights and their presence under state control could be abated by taking citizenship beyond the boundaries of a single state. The formulation and development of national regional communities could serve to bridge the concept of universal rights on the global plan with the rights of the citizens at the national level.

The contradiction between the formal equality of people with regard to their basic rights and the considerable social and economic inequalities between them derives from the open-market environment, from the bitter competition within which such rights are exercised. This growing economic and social inequality sets up a barrier to the attainment of universality of rights. The contradiction between the universalization of rights and the particularism and relativism of the rights related to the different traditions of the various nations and civilizations exist. The understanding of the values and significance of human rights is a prerequisite for their universal nature.

However, that there is a universality of basic moral requirement can be seen – that all human societies show a concern for the value of human life – in all societies there is prohibition of incest, opposition to boundless promiscuity and to rapes. Similarly, it is generally accepted that freedom from torture, slavery, arbitrary execution and freedom to travel are included in the minimal and universal moral code of human rights.

It is important to note that universality does not mean uniformity, i.e. to say, ways of implementing, promoting and developing the rights could vary with local circumstances, Human rights are something more than a set of do's and don'ts. They imply ethical values and attitude to human relationships. To assert adamantly the universality of human rights, by rejecting the claims of cultural distinctiveness that operate within a theoretical frame work, would be to hinder a proper analyzed of the dynamics of state-society relation. This would prevent any open-minded discussion about human rights and local cultures to evolve into a truly Universalist vision of the protection of human rights.

III

When we are concerned with enquiring into the ground of our obligation to human rights it becomes necessary that we make a distinction between moral and legal rights. The issue has been raised and referred in *Encyclopedia of Philosophy*, Vol.-7 as follows by S.I. Benn, "to ascribe a legal right to a person is ... to reach a conclusion of law but to ascribe a moral right is only to make a relevant claim, Thus A may have a right to gratitude and special consideration from B, whom he has often helped in the past but B's obligation to A does not mean than his duty in every case is to prefer A's interest to every other. A's right, then is not a conclusive ground of claim. Indeed, one might want to say on occasion that although B has an obligation to A, he would do wrong to let it influence him. Right, in short, is something to be taken into account, it is not a conclusion or moral duty." (Elements of Jurisprudence, P-82-quoted by J.H. Moorhead in *Encyclopedia of Religion and Ethics*, edited by James Hastings. Vol- 10 Pg. – 197b, Published by T & T Clerk, 1963)

The traditional view of natural rights is found to rest on liberal individualism. At present these rights, which are mere commonly referred to as human rights, are claimed not only as freedom from inference of an indefinite kind but they do also involved certain positive benefits like education, augmented standard of life, medical treatment and so on. On the other hand, if it is admitted that somehow mankind have obligation for such rights then it becomes also obligatory to find out some measure to realize the rights. However, like many other moral questions the question regarding our obligations to the right also remains unanswered.

IV

Discussion on the problem of human rights and discrimination is recent phenomenon. Actually speaking it dates back to the 13th Century when a few barons approached to the king of England and prayed for the protection of their rights which they considered to be most fundamental. The Bill of Rights was motivated by the same interest. The first attempted at protection of human rights refers to Magna Carta and the second to the Bill in the 18th Century. We were unaware of the fact that we had been subjected to discrimination – discrimination in respect of race, caste and sex. Discrimination is supposed to be an evil which must be understood in the background of a very fundamental fact which claims that there are certain basic human rights which all human beings enjoy equally and which must not be infringed. It is unfortunate that we have been ignorant of our rights. But in reality discrimination is rampant in human society, no matter whether we realize it or not. Those were the ages of placid uncritical acceptance. Humiliation and suffering attend discrimination if people notice the presence of this evil. We will try to trace the reasons of the submission of the people to the evil of discrimination in the context of Indian society which for long is a seed of racial and caste discrimination. Discrimination was accepted ungrudgingly because it enjoyed religious and scriptural sanction. Human beings have been classified as belonging to four *varṇa*-s and this is a division made by God Himself. Naturally it was thought that it was ordained by divinity that people belongings to different *varṇa*-s should have different Rights.

It took long time to convince people that caste or racial difference is false in the sense that it does not tell us anything about the essence of man. That a Man belongs to a certain race or caste is a matter of chance for which he is not responsible. It is just a contingent feature of man that he belongs to a certain *varṇa* and *āśrama*. It is as contingent as the property of being in a red dress. The dress can be shed without thereby changing the essence of man. So is caste or race. Unfortunately classes in India have been treated hierarchically one class being superior to another class. Rights and privileges have been distributed among the classes corresponding to the qualitative superiority of one class to another. Such distribution of Rights and privileges actually amounted to discrimination – some class been deprived of the rights which other classes are allowed to enjoy. As we have already said man does not opt for the race or caste to which he belongs.

The basic idea is that all men are equal. If this is true then all men should have equal rights and privileges. Thus we come to have the notion of human rights 'which belongs to any person' who is a human being. All men enjoy the right equally irrespective of race, creed and caste. It seems to go against deep-seated conviction of the people of India that difference between them has been introduced by God Himself, as such a divine sanction supports it. But it would be absolutely wrong to think that men should not have the equal right. Actually what the Gītā suggested is that people are born with different capabilities. Naturally they cannot complain if they are allowed to enjoy different rights. This is exactly what Plato said in his "*Republic*". The Gītā or *The Republic* are correct from a certain point of view. But the question of the enjoyment of the basic human right is still relevant when there is no consideration of class difference. Is it not true that we have created difference between man and man with respect to his caste, race, colour and education and sex? But these features cannot be the essence of man. If whiteness be the defining mark of man then a black will not be considered a human being. If education and sex be the essential mark of man then the person who is uneducated or one having a different sex will not be a human being.

The primary postulate behind the concept of human right is that, all men are equal. Men are found to be equal when their race, caste, creed, wealth, power, etc. are lifted. What is left is man. Human rights refer to the rights of this 'man'. These are rights which are man's own possession. It is not conferred on him by his society. Man does not require the permission of others to demand what is enjoyed by his rights. These rights have intrinsic value in the sense that it asserts itself independently of the permission of others. It may be said that freedom is the most basis of all human rights, because it is the basis of all rights. Mill in his essay 'On Liberty' tell us that freedom is the liberty of holding one's opinion regarding his religion, thoughts and views about his own plan of life.

The preamble to Declaration of Human Rights says a very important thing. The right which cannot be established and in favour of which there is no demand is simply empty. These are two conditions which make human rights meaningful. In the first place, when we talk of human rights we do not simply think of people having such rights. The society must concede such rights; it must allow people to enjoy

them. Mere recognition of rights is not enough. Secondly, people must have the awareness that they have certain rights. A society which is poor, socially and economically weak is not aware of its rights. These impediments are removed if there is education. One must be aware of the meaningfulness of the concept of human right and this awareness follows education.

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