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Human Right: Nature, Concept and Development

Chris O. Abakare

Department of Philosophy, Nnamdi Azikiwe University, Ifite Road, 420110, Awka, Anambra State, Nigeria.
* chrisabakare@gmail.com

Abstract

Each person has the right to "life, liberty, and security". These rights are inalienable and are expressed in many national constitutions and international charters. The right to life of all people is undisputed and indisputable. It is a 'core' right without which all other rights are meaningless. The value of human life is in many ways the most fundamental of all questions facing humanity and we can all contribute to that ongoing debate, drawing from both religious and secular belief as we see fit. The purpose of the law of human rights is to ensure that the human rights of individuals are protected. The realization of positivization of human rights is a very important step in achieving this purpose. This work describes human rights, its concept, and development. This work argues that the religious input into the sanctity of human life has some basis in religious ethics, such as relief of suffering or freedom to reproduce. They have become part of the currency of international relations, and most countries participate in the human rights system.

Keywords: Human Rights, liberty, Security, Religion.

1. INTRODUCTION

The history of human rights covers thousands of years and draws upon religious, cultural, philosophical and legal developments throughout the recorded history. It seems that the concept of human rights is as old as the civilization. This is evident from the fact that almost at all stages of mankind there have been a human rights documents in one form or the other in existence. Human Rights cover those essential rights which lead to the balanced development of individual human being. They are independent, inalienable and inviolable and also universal. The concept of human rights represents an attempt to protect the individual from oppression and injustice (Eba 2020).They provide a human standard of achievement for all the people and all the nations. Human rights are currently a matter of international interest and concern for a wide variety of reasons. Some of these are deeply rooted in the historic experience and are part of man's struggle for the realisation of all human values (Sengupta 2004). Human rights are those minimal rights which every individual must have against the state or other public authority by virtue of his being a 'member of human family', irrespective of any other consideration.

The expression 'human rights' had its origin in international law, appertaining to the development of the status of individual in the international legal system, which was originally confined to the relation between sovereign states, who were regarded as the only persons in international law. For all practical purposes, the genesis of this international aspect of human rights is not older than the Second World War, though the concept of an individual having certain inalienable rights as against a sovereign state had its origin in the dim past, in the somewhat nebulous doctrines of natural law and natural rights (Beitz 2011). All human rights derive from dignity and worth inherent in the human person, and that the human person is the central subject of Human Rights and Fundamental Freedoms. In simple terms, whatever adds to the dignity and free existence of a human

being should be regarded as human rights. Evolution and crystallization of the concept took a long time. Anton, Donald K., and Dinah L. Shelton explains human rights as thus:

> To call them human rights suggests that they are universal, they are due of every human being in every human society. They do not differ with geography or history, culture or ideology, political or economic system or state of development. They do not depend upon gender or race, class or status. To call them rights implies that they are claims as of right, not merely appeals to grace, or charity or brotherhood or love; they need not be earned or deserved. They are more than aspirations or uncertain of the ―good‖ but claims of entitlement and corresponding obligation in some political order under applicable law, if only a moral order under a moral law (2011, p. 195).

Roots of human rights may be traced back to religion. In recorded history and scriptures, there have been references on the basic human rights, though they were not referred to by that name (Joas 2013). Religion also influenced the human rights. However, the positive law of human rights, through international, regional and national institutions began to develop more or less in the middle of the twentieth century, of course with a few exceptions (Joas 2013). Although at the end of First World War, some attempts on modest level were made through the Treaty of Versailles to promote and universalise human rights but it met with no success. Since the judicial conscience of the civilized world was very much in favour of safeguarding the rights of individuals against its violation by states, it is consistently realized that the rights of individuals must be universalised so that it may be guarded against its violation by one's own state (Joas 2013).

No declaration of human rights will ever be exhaustive and final. It will ever go hand-in-hand with the state of moral consciousness and civilization at a given moment in history. And it is for that reason that even after the major victory achieved at the end of eighteenth century by the first written statement of those rights it remains thereafter a principal interest of humanity that such declaration should be renewed from century to century (Lindkvist 2014). This is evident from the United Nations Charter which reaffirms faith in fundamental rights, in the dignity and worth of human person and enlists promotion and encouragement of ―respect for human rights and for fundamental respect for all without distinction as to race, sex, language or religion‖, as one of the purposes of the United Nations (Lindkvist 2014). The General Assembly of the United Nations is under an obligation of ―assisting in the realization of human rights and fundamental freedoms for all without discrimination as to race, sex, language or religion (Lindkvist 2014). Similar is the case with the *Universal Declaration of Human Rights, 1948.* It is said to be an extension of the charter provisions dealing with human rights. It is rightly reckoned as ―the mine from which all human rights have been quarried (Lindkvist 2014).

Thus the first international pronouncement of human rights came in the form of Universal *Declaration of Human Rights* adopted by the United Nations General Assembly in 1948, guaranteeing inalienable and inviolable rights of all members of human family as a matter of fundamental principle. The Declaration could not and did not purport to be more than a manifesto, a statement of ideals, a ―path finding instrument. Its most important contribution lies in the pioneering formulation of the principal human rights and fundamental freedoms (Mertus 2005). The impact of the development of human rights jurisprudence at international level and on municipal law is tremendous. Almost all democratic societies adopted them in their municipal sphere. In Indian municipal law system justiciable position is accorded to the civil and political rights under the Part III of the Constitution and economic social and cultural rights are given non justiciable position under Part IV.

2. NATURE OF RIGHTS

From the study of different sources or basis as to human rights it can be said that it is difficult to conceptualise or define human rights. Yet attempts have been made by political thinkers and jurists to define human rights in variety of ways giving their meaning and application. However, their common focus is in the idea that the human rights apply to all human beings because they are human beings. Some of the definition can here be referred to:

1) According to Tiber Mecham, human rights are universal and irrevocable elements in a scheme of justice. Accordingly, justice is the primary moral virtue within human society and all rights are fundamental to justice (Nirvani 2005).
2) Kant Baier defines human rights as those moral rights whose moral ground and

generating factors are the same, namely being human in some relevant sense (Nirvani 2005).

3) Human Rights, per Joel Feinberg, are basic moral entitlements possessed only by persons. He defines human rights as, —moral rights held equally by all human beings, unconditionally and unalterably. Thus, they are claims based on human nature or moral claims based on primary human needs (Nirvani 2005).

Rights are those conditions of social life without which no man can seek, in general, to be himself at this best (Wenar 2005). A right is merely the dominating relation of a man with the thing or object of his necessity; and the good consists in the absence of obstruction to, or the usurpation of, that thing or relation. A right may thus be temporary or permanent and perpetual, in view of the temporary or permanent absence of such obstruction or usurpation. The rights being a part of man's being, the security of the rights is the essence of his personality (Wenar 2005). Thus, possession of rights has been considered as very much essential for every man in all ages, for the realisation of his personality. —Rights is an ambiguous term used to describe a variety of legal relationships. One finds in Hohfeldian analysis, right sometimes is used in its strict sense as the right holder being entitled to something with a correlative duty in another; sometimes it indicates immunity from having a legal status altered; sometimes as a privilege to do something; and also as power to create a legal relationship. Although all of these terms have sometimes been identified as rights, each concept invokes —different protections and produces variant results (Yates 2013).

There are two competing, at the same time, widely accepted theories regarding the nature of rights: one emphasises —will or choice; the other emphasises on —interest or benefit Yates 2013). The chief exponent of the first theory- the will theory- is H .L. A Hart (1979). For Hart, the purpose of legal rights is to recognise individual self expression . This theory is also subscribed by those who view the purpose of law as being to grant the widest possible means of self-expression to the individual, the maximum degree of individual's self-assertion. The theory identifies the right-bearer by virtue of the power that s/he has over the duty in question. S/he can waive it, extinguish it, enforce it or leave it unenforced. This decision is his/her choice (Hart 1979). Individual discretion is the single most distinctive feature of the concept of rights (Hart 1979). This theory seems to allow all rights to be waived, which is however, not so in reality. It fails to offer an adequate account of all the rights. Hart himself conceded that his analysis of rights does not offer an adequate account of all legal rights, let alone moral ones. Certain rights corresponding to duties cannot be waived. For instance, one's duty not to kill or torture cannot be waived by potential victim releasing one from his duty not to kill or torture. Other difficulties in will theory are regarding procedure the children's rights, rights of animals, or other things.

The interest or benefit theory was first propounded by Bentham, and was later adopted and espoused by others. According to these, the purpose of rights is not to protect individual assertions but certain interests. Rights are thus benefits secured for persons by rules regulating relationships (Hart 1979). An important preliminary point is that a jural relation between two parties should be considered only between them, even though the conduct of one may create another jural relation between him and someone else (Hart 1979). One version of the benefit theory says that X has a right whenever he stands to benefit from the performance of a duty by some one else. Another says that X can have a right (whether in moral theory or within a legal system). Whenever the protection or the advancement of an interest of his is recognised (by moral theory or the legal system as the case may be) as a reason for imposing obligations, whether they are actually imposed or not (Hart 1979). This theory covers all types of rights and liberties. The only difficulty with the benefit or interest theory is that it fails to explain why rights should be tied to benefits at all, for under certain circumstances, an individual's interests can be protected without recognising a right in him.

3. HOHFELD'S ANALYSIS OF RIGHTS

The contemporary discourse on rights basically influenced by its origin and derives from the language of the jurists and lawyers. It is largely concerned with the human and natural rights whether embodied in the law of the community or not. In case embodied, though with different names. To start with the contemporary juristic analysis of right talk, Hohfeld's analysis of rights satisfactorily accommodates a wide range of uses of the term right. There are different types of rights. The concept of right is used ambiguously, to cover different legal relations. Wesley N. Hohfeld discusses four different meanings of a right. They are claim-right, liberty, power and

immunities. However, even prior to Hohfeld, Bentham had recognised this ambiguity, when he distinguished rights and liberties. Morden discussion of ―rights has a distinct feature, i.e., there is an attempt by philosophers and jurists to be more precise in their use of the concept of 'right'. Modern approach began with Bentham and Austin, though their predecessors had known that right was related logically to duty and obligation, and also the concept of law like rules and principle, there was no systematic attempt to draw the said relationships (Halpin 1997). Ultimately, it was Wesley, N, Hohfeld who analysed the concept to facilitate resolution of practical problems in judicial reasoning (Halpin 1997). But Hohfeld's account of that concept was the most rigorous as remain accepted even today.

According to Hohfeldian analysis, a person has a claim-right‖ to do when another person has a duty to let him do. A person has a liberty to do something, when he is under no duty to do that thing. A person has power when he has the legal ability to change others claim-rights and duties in certain respects. A person has immunity when he has the legal guarantee against imposition of certain duties by another person or it is some person's lack of power in certain respects. For these four rights, duty, no right, liability and disability are the correlatives. For Hohfeld 'Right' in the strict sense was claim-right - with *correlative* of duty. A right is thought to consist of five elements (Halpin 1997).

1) A right holder, (subject of a right);
2) What is right to (object of right);
3) Which he/she may assert, demand, enjoy, or enforce (exercising right);
4) Against some individuals or group, (the person or persons who have correlative duty);
5) The basis for such claim (justification of right).

4. RELIGIOUS APPROACH TO HUMAN RIGHTS

The religions texts, be it the Vedas, the Upanishads, the Quran or the Bible, all have references to the divinity of man. Every human being is a divine being and has a claim to dignity, liberty and equality. This theory held sway in that period of history when society was not so complex and the political structure a simple one.[73] Human rights as claims of the human beings found recognition at such early ages.

4.1 Hinduism

Hindus consider law as a revealed law. Theory is that someone amongst us, our great *Rishis* had attained such spiritual heights that they would be in direct communication with God. The revealed law has come to us in the form of four *Vedas*. The assumption is, the later development, the *smrities*, the Digests and Commentaries are nothing but exposition of sacred law contained in the *Vedas* (Sharma 2004). In the Hindu philosophical thought, the concept of 'Dharma' pervades throughout. And law is considered as a branch of Dharma. According to Manu, 'Dharma' is ―what is followed by those learned in Vedas and what is approved by the conscience of the virtuous who are exempt from hatred and inordinate affection (Sharma 2004). 'Dharma' in simple parlance means the sum total of religious, moral, social and legal duties. There is no distinction between legal duties and moral and religious duties. There is a blending, and inter-working of religious, ethical and legal principles, because law was not separated from religion. Hindu philosophy spoke of Righteousness in terms of law, and law in terms of righteousness (Sharma 2004).

In the Hindu Philosophy, the starting point is not the individual; it is the whole complex concatenation of the Real. Dharma is the order of the entire reality, that which keeps the world together. The individual's duty is to maintain his rights; it is to find one's place in relation to society, to the cosmos, and to the transcendent world. We have the right to eat only in as much as we fulfil the duty of allowing ourselves to be eaten by a hierarchically higher agency. Our right is only a participation in the entire metabolic function of the universe (Polisi 2004). *Rigveda* which is regarded as the oldest document declares that all human beings are equal and they are brothers. The *Atharvana Veda* declared that all human beings have equal right over water and food (natural resources). The Vedas including *Upanishads (shrutis*) were the primordial source of 'Dharma' which is a compendious term for all human rights and duties….(Polisi 2004, p. 64). The ancient philosophers considered that a right can be secured to every individual by creating a corresponding duty in other individuals, and preferred a dutybased society where the right given to an individual is the right to perform his duty' (Polisi 2004).

Human rights gain meaning only if there is an independent judiciary to enforce rights. Here the

dharmashastras are clear and categoric. As quoted by V.R. Krishna Iyer:

> The independence of the judiciary was one of the outstanding features of the Hindu judicial system. Even during the days of the Hindu monarchy, the administration of justice always remained separate from the executive. It was a rule independent both in form and in spirit. It was the Hindu judicial system that first realised and recognised the importance of separation of the judiciary from the executive, and gave this fundamental principle a practical shape and form…. The evolution of the principle of separation of the judiciary form the executive was largely the result of the Hindu conception of law as binding on the sovereign. Law in Hindu jurisprudence was above the sovereign. It was the *dharma* (Krishna Iyer, 1999, p.115).

Thus the King was subject to the law as any other citizen. While religion prescribed certain duties, it propounded certain freedoms, freedom form violence; wants; exploitation; dishonour and from early death and diseases; certain virtues like tolerance compassion for fellow beings; knowledge; freedom of thought and conscience and from fear or despair (frustration) (Suresh 2010). The Hindu *Dharmashastra* and *Arthashastra* etc., contain a system which regulates the duties of persons – from king to his subjects. The functional focus of Dharma is social order. The message is dharma is the supreme value which binds kings and citizens, men and women (Suresh 2010).

4.2 Christianity

Though the term 'human right' as such is not found in traditional religions, human rights are found to have basis in a law higher than the State. The Almighty or the Supreme Being is held to be the source of the higher law. With reference to concept of rights it is said that a common father gives rise to common humanity and from this flows a universality of rights. Since rights stem from divine sources, they are inalienable by moral authority. There is a positive aspect to divine order since obedience derives from one's duty to God. Since duties are ordered by God, those duties accrue to the individual benefit and therefore it should not be violated by state (Moyn 2015). Expressions of many of the human rights are found in Bible. For instance, limitation of slavery; racial equality; justice to the poor; fair treatment to strangers etc. Equality of all human beings is recognised on the basis of the common fatherhood of man (Moyn 2015). This is also evident from the words of Jesus Christ, when he said: —Do not do unto others what is hateful to you. The God will know. Do unto others as you would have them do unto you (Moyn 2015).

Universality, higher than territorial possessions, denunciation of unrighteous riches and exploitation of the poor, egalitarianism of all in the eyes of God, respect for the despised and the destitute etc were implicit in Christ's gospels….. The right to dignity, self-expression and other freedoms even for the destitute and the despised and for those branded as prostitutes were integral to the ideology of Jesus. He, incarnated, as it were, to spread the message of the noblest version of human rights and the divinity of all God's children and opposed exploitation, material and sacerdotal (Shortall & Steinmetz-Jenkins 2020).

4.3 Islam

Islam is the Arabic word for submission to the will of God (Allah), emphasised unity of humanity. Equality, the status of women, the rights of the less privileged (minorities, poorer working groups)... were reflected in the Prophet's message (Sachedina 2009). In the Holy Quran there is an injunction that all men are brothers and that non-Muslims should be treated with no less dignity and respect for their personality than Muslims. The Qoran prohibits discrimination against all persons whether white or black (Sachedina 2009). Quran and Sunna have repeatedly talked about the importance of human rights. The basic principle of Islam is that all men are equal and Islam believes in universal brotherhood. There are a number of Quranic verses, which recognise absolute equality between human beings (Molia 2008). In Islam human rights are concerned with dignity of the individual, the level of self-eastern that secures personal identity and promotes human community (Molia 2008). Community has gained primacy over individuals. Individual as a part of the community was to realize that community provides for the integration of human personality. Individual owed obligations for the good of community as a whole. So in Islam the language of

duty seemed more natural than that of rights and obligation is consolidated by its being owed to God. Rules of conduct for all Muslims were laid down by Allah, and communicated through Mohammad, and Muslims do service to God through obedience to these rules… Thus essential characteristic of human rights in Islam is that they constitute obligations connected with the divine and derive this force from this connection (Sachedina 2009).

Muslims are enjoined constantly to seek ways and means to assure to each other what in modern parlance called human rights. Quran contemplated certain basic rights like - Right to protection: to justice; to equality; to disobey what is unlawful; to participate in public life; to freedom; to freedom of conviction; of expression; to protection against persecution on the ground of religion; to protection of honour and good name; to privacy; to property to adequate remuneration and compensation (Molia 2008).

5. Theoretical Basis of Human Rights

5.1 Natural Law Theory

Human rights are those irreducible minima which belong to every member of the human race when pitted against the state or other public authorities or group or gangs and other oppressive communities (Finnis 2011). As a member of human family, he has a right to be treated as human. It is an inalienable right. When this right is denied, human mind expresses dissatisfaction. Whenever there was an attempt 'to suppress the individual's freedom an appeal to natural law was made on the assumption that, beyond religious superiors and crowned heads, there was a system of natural law which embodied reason, justice and universal ethics' (Finnis 2011, p 74).

Natural rights which were akin to modern human rights were derived from natural law. The credit of giving birth to natural law goes to the Greek, with great scholars like Sophocles and Aristotle. Romans further developed it. The early law of Romans was called '*Jus civil*'. Later the Romans developed the legal systems called '*Jus gentium*', this was the law of universal application. In the republican era of Rome, *jus gentium* was reinforced by natural law as jus natural. *Jus natural* meant —the sum of those principles which ought to control human conduct because founded in the very nature of man as a national and social being (Moore 1985). According to Romans natural law embodied the elementary principles of justice which were the dictate of right reason (Finnis 2011). From this natural law based on right reason, 'the right of man as a legal or moral concept' first appeared in the form of natural rights. These natural rights of man were moral rights which every human being, every where, at all times, ought to have simply because of the fact that, in contradiction with other beings, he is rational and moral. The natural rights of man, being embodiment of right reason, were —not the particular privilege of citizens of certain state, but something to which every human being, everywhere, was entitled in virtue of the simple fact of being human and rational. As man is endowed with reason, for that reason, he is also endowed with —certain rights without which he ceased to be a human being. Thus, the natural rights were derived from the nature of man for these are inherent in the nature of man and form part of his intrinsic nature.

During middle ages, St. Thomas Aquinas preached for equality within the framework of a stable society. Teutonic law stressed the fact that law belonged to the community, to the folk, and was thereby the common possession of everyone. Even feudalism, while prescribing duties owed by a vassal to his lord, inspired the idea of 'right' by saying that no more could be demanded of him than was due. During the period of Reformation and Renaissance, philosophers like Hobbes, Locke and Rousseau propounded social contract theories advocating for individuals inalienable rights for life, liberty and estate, and insisted that the purpose of government was to protect these rights. However, these rights were retained by individuals within a system of social contract - a balancing factor.

5.2 Natural Rights

The Natural law theory led to the Natural rights theory. For John Locke, the chief exponent of this theory, natural law can be understood as protective of the subjective interest and rights of individual persons (Moore 1985). It is asserted that the failure to respect natural law, the violation of the principles of equality and non-arbitrariness, provided justification for the natural rights. The doctrines of natural rights have received their fullest expression in the writing of John Locke and other social contract theorists. Locke writes, 'man is by nature endowed with enough freedom to become a man in conformity with his law... This law in shape of reason, obliges everyman to preserve his life and limits his liberty and possession and to be active in rendering the same service to others. For everyman his original liberty has meaning only by reference to this law (Raphael 1967,

p. 20). The need to delineate the scope of natural rights perhaps was not pressing for the early natural law philosophers. Life, liberty, property, trial by jury, the right to assembly and to petition appeared to represent such self-evident values that they seemed to require little elaboration. Hence, the doctrine of natural rights was less concerned with the content of the rights than with the rationale, such as the inherent nature of man, the divine will, or historic tradition. In all, the rationale determined the content.

Under Locke's view of human beings, in the state of nature, all that was needed was the opportunity to be self-dependent; life, liberty and property were the inherent rights that met this demand (Raphael 1967). The list of natural rights varied with each exponent. Most of the norm-setting of natural rights theories contain *a priori* elements deduced by the norm setter, thus, the rights considered to be natural differ from theorist to theorist, according to the theorist's conception of nature. The natural rights doctrine was frequently associated with metaphysical and theological principle and also natural rights were confined to negative rights protected against the state. The other weakness was that, the natural rights were claimed to be inalienable, absolute and unalterable and therefore, claimed natural rights unless confined to a single right, tended to come into conflict with each other. Further natural rights theory was also criticised by utilitarians like Bentham and by Marxist.

None of the so called rights of man, therefore, go beyond egoistic man, beyond egoistic man, beyond man as a member of civil society, that is, an individual withdrawn into himself, and separated from the community. F.M. Bradely too opposed the idea of individual rights when he wrote, —The rights of the individuals today are not worth serious criticism. The welfare of the community is the end and is the ultimate standard. And over its members the right of its moral organism is absolute. Its duty and right is to dispose of those members as it seems best (Paine 2008). The effect of such criticism of natural law and natural rights theory was to undermine the rationale behind the theory and also of its universality. One consequence of the weaknesses recognised in this helped the other - especially utilitarian concept to gain significance and prevail during the 19th and the early 20th century (Paine 2008).

5.3 Revival of Natural Rights

The revival of natural rights is a consequence of revival of the theory of natural law itself. Kelsen has said: 'The theory of natural law, which was dominant through out the 17th and 18th centuries, after relapsing during the 19th, has again in the 20th re-entered the foreground of social and legal philosophy, in company with religious and metaphysical speculation (Finnis 2011). An approach kindred to that of 'natural law' colours the current movement to bind states by international covenants to observe human rights and fundamental freedoms, while to some extent a 'natural law' philosophy underlines the *Draft Declaration on the Rights and Duties of States of 1949* prepared by the International Law Commission of the United Nations. 'Natural law' was invoked also in order to justify the punishment of offenders, guilty of the grosser and more brutal kind of war crimes (Finnis 2011). Though the heyday of natural rights proved short, the idea of human rights nonetheless endured in one form or another. The abolition of slavery, factory legislation, popular education, trade unionism, the universal suffrage movement -these and other examples of the 19th century reformist impulse afford ample evidence that the idea was not to be extinguished even if its transempirical derivation had become a matter of scepticism. But it was not until the rise and fall of Nazi Germany that the idea of rights - human rights - came truly into its own (Finnis 2011). The twentieth century saw the revival of natural rights as human rights. The natural rights doctrine remains one of the most powerful concepts and —its regained prominence is apparent in national and international law and politics (Finnis 2011). This is evident from the fact that almost every state in the modern world has incorporated the concept of human rights in its constitution. Importance of human rights is also recognised in international law - a number of instruments on human rights are made since 1948.

Many factors can be held responsible for the revival of natural rights theory:

(i) The great wars of twentieth century and the need for peace and respect for human rights;

(ii) Need to counter dreadful treatment of people by totalitarian governments;

(iii) Need to make persons and states accountable for their crimes against humanity;

(iv) Desire for international peace and security and countering terrorism etc. Human rights have become a

> fundamental premise in the international premise in the international, political dialogue. The most important manifestation of human rights in the world scene is the belief that a totalitarian regime may no longer victimise its own people with impunity or in virtual silence (Muzaffar 2007).

5.4 Positivism

In the era of legal positivism Bentham held that rights could be evaluated by reference to the principle of utility and thereby shifted the basis of rights from morality to positive law. He and others in analytical tradition such as Austin, Kelsen and H.L.A. Hart transformed natural rights into positive legal rights (Nino 1994). Positivism dominated the legal theory during the nineteenth century and continued to be accepted in the twentieth century. According to the Positivists, the source of Human rights lies in the enactment of a system of law with sanctions attached to it. Classical positivists deny an *a priori* source of rights and assume that all authority stems from what the state and officials have prescribed. This approach rejects any attempt to discern and articulate an idea of law transcending the empirical realities of existing legal systems (Nino 1994). For positivist the law is actually laid down; it is a command. It has to be kept separate from the law that ought to be (Nino 1994). Hence the source of rights - human rights is to be found only in enactments of a system of law. According to Austin, it is by virtue of sanctions that expression of desire not only constitutes commands but also imposes an obligation or duty to act in the prescribed way.

H.L.A. Hart has a refined approach of this philosophy. Hart finds that Austin's analysis confuses, having an obligation to do something with being obligated to do it. He points out that whether someone has obligation on particular occasion is independent of the likelihood of his incurring the threatened evil on the particular occasion… what is required according to Hart, are rules that confer authority or power on persons to prescribe behaviour and to visit breaches of the prescriptions with the appropriate evils (Campbell 2004). For Hart, the rules may be primary and secondary rules, and they constitute the core of legal system. Hart finds the authority of the rules of law in the background of legal standards against which the government acts, standards that have been accepted by the community. He supports a concept of law which allows the invalidity of law to be distinguished form its morality (Campbell 2004). This is the difference between natural rights philosophy and positivist philosophy.

5.5 Marxist Theory

Marxism is concerned with the nature of human beings. Marx regarded 'the law of nature' approach to human rights as 'idealistic' and 'historical'. He saw nothing 'natural' or 'inalienable' about human rights. In a society in which capitalists monopolise the means of production, he regarded the notion of individual rights as a bourgeois illusion (Aronowitz 2016). Thus, Marxism sees a person's essence as a potential to use one's abilities to the fullest and to satisfy one's needs. In a capitalist society protection is controlled by a few, hence it cannot satisfy those individual needs. Marxist concept of rights of individuals is distinct from the rights of the society as a whole. Marxists hold that only by achieving the upliftment of the society or community, the higher freedoms of individuals can be achieved. Thus even satisfaction of basic needs of individuals is contingent on realization of social goods.

Since the ultimate goal is the realisation of communism and law is an instrument whose aim is to teach citizens, it imposes observance of social duties. This is because in the communism there would be no class, if there are no class conflicts or conflict between interests of Government, and people, there should be no rights. Yet they have it through the state, the people grant themselves certain rights not as a matter of expediency by self interested right ruling class, but as a product of collective will of the people. As Berman points out, rights thus are conferred in the limited sense, in order to encourage one to be loyal, hardworking, well disciplined and a virtuous citizen (Aronowitz 2016). Thus, according to Marxism, only legal rights granted by the state to a limited extent exist to fulfil the obligation of the state. Marxists recognition of rights stems from its view of individual as indivisible from the social whole; it is only by meeting of the will of the whole that the higher freedom of individual can be achieved. Thus, even satisfaction of basic needs can become contingent on realisation of societal goal.

The whole history suggests that the concept of human rights is not new and it existed in all civilisation known to the world in one form or the other. These rights were called 'natural rights' or

'rights of men' or 'duties of the king' by different philosophers but the aim of all those was the same, that is to protect and provide certain basic rights (Aronowitz 2016).

5.6 Sociological Theory

The sociological approach as far as human rights are concerned, directs attention to the questions of institutional development aimed at classifying behavioural dimension of law and society, focuses on the problems of public policy and identifies the empirical components of human rights in the context of social process (Baghai 2012). For human rights theory, a primary contribution of the sociological school is its emphasis on obtaining a just equilibrium of interest among prevailing moral sentiments and the social and economic conditions of time and place. One of the leading sociological thinkers, Roscoe Pound pointed out that 'during the nineteenth century the history of law was written largely as a record of an increasing recognition of individual rights' (Baghai 2012, p. 78). He further pointed out that in the twentieth century —this history should be written in terms of a continually wider recognition of human wants, human demands and social interests (Baghai 2012). He did not try to give value preference to these interests. His guiding principle was one of —social engineering‖, that is, the ordering of human relations through politically organised society so as to secure all interests insofar as possible with the least sacrifice of the totality of interests. This approach is useful in the understanding of the scope of human rights and their correlation with demands. It takes into account the realities of the social process; and how to focus on rights in terms of what people are concerned about and what they want. However, one difficulty with the sociological approach is its lack of focus on how rights are interrelated or what the priorities should be; how a normative conclusion about rights can be empirically derived from factual premises such as the having of interests.

5.7 Theories Based on Justice

If law is a system of rules, then some aspects of 'procedures' and of 'formal' justice may be inherent in it (Abakare 2020). When justice is used as the measure of the law, the assumption is that law could be made to conform to justice; 'justice' in this context stands for a substantive moral criterion sometimes called 'distributive justice' or more recently 'social justice'. The law ought to distribute rights and duties in a certain way, and if it does not it is unjust. Thus the object of justice is proper distribution of social goods. This theory of human rights based on justice is advanced by Prof. John Rawls. According to John Rawls, the chief exponent of this theory, —Justice is the first virtue of social institutions (Baynes 2009). The role of justice is crucial to understanding human rights. Human rights are an end of justice. For Rawls, the principles of justice provide a way of assigning rights and duties in the basic institution of society and also define the appropriate distribution of benefits and burdens of social cooperation. The general conception of justice behind the principles of justice is one of fairness. The concept of fairness is found throughout in theories based on justice. The concepts of fairness and justice help to determine all social primary goals, such as liberty and opportunity, income and wealth, and the leases of self respect which are to be distributed equally unless an exception is made for the benefit of least forward (Baynes 2009).

5.8Theory Based on Equality of Respect and Concern

The basic premises of this theory propounded by Dworkin are that governments must treat all their citizens with equal concern and respect. He proposes the 'right to treatment as an equal to be taken as fundamental under the liberal conception of equality' (Baynes 2009). Dworkin has affirmed the utilitarian principle that 'everybody can count for one, nobody for more than one'. He even advances the idea of state intervention in order to achieve social welfare. In his view, —a right to liberty is too vague to be meaningful but there are certain specific liberties, such as, freedom of speech, freedom of worship, rights of association and personal and sexual relation require special protection against government interference (Baynes 2009). Dworkin holds that if these liberties were left to a utilitarian calculation or an unrestricted calculation of general interest, the balance would tilt in favour of restriction instead of general interest. The liberties thus must be protected against external preferences and must be given a preferred status. Dworkin's theory of human rights seems to be similar to the rights in the natural law tradition. He minimises the tension between liberty and equality, by retaining both the benefits of rights theory without the need for an ontological commitment and the benefits of utilitarian theory without the need to sacrifice basic individual rights.

5.9 Theory Based on Dignity

Dignity of person or human dignity is an expression of a basic value accepted by all. The expression human dignity finds place in many of the international instruments on human rights and freedoms. Human rights derive from the inherent dignity of the human person. In one sense dignity is the intrinsic worth of human person. The worth of every person should mean 'that individuals are not to be perceived or treated merely as objects of the will of others'. The idea that human rights are derived from the dignity of the person has two corollaries. The first corollary is the idea that basic rights are not given by authority and therefore may not be taken away; the second is that they are rights of person, every person. This way dignity is private or individual. In the other sense, dignity is collective, —prescribed by social norms (Waldron 2013). Dignity here means the particular cultural understanding of the inner moral worth of their human person and the person's political relation with the society.

Thus, this theory regards protection of human dignity as a paramount objective of social policy (Ashcroft 2005). This is a value policy oriented approach based on protection of human dignity. The demands for human rights are demands, for wide sharing in all the values upon which human rights depend for effective participation in all community value processes. There are eight such independent values as basis for human rights like; respect, power, enlightenment, wellbeing, health, skill, affection and rectitude (Ashcroft 2005). This theory based on dignity envisages that members of the community should participate in democratic distribution of values. The ultimate goal here is to ensure a world community in which there is democratic distribution of values, and where protection of human rights is the paramount objective of social policy. In all these and some of the other theories, a common feature, that appears by and large is the attempt to balance rights of individuals i.e., human rights with the societal interests. This aspect is more clearly visible in the revived natural law philosophy (Waldron 2013). For instance, John Rawls argues for equal liberty and arrangement of social and economic inequalities for the greatest benefit of the least advantaged; with a 'just savings principle'.

6. Conclusion

Human rights, available to every person for the reason that he is a human being, compelled the concern of international law from World War-II onwards. However, these human rights, which go to make life with dignity possible found place in ancient civilisations, be it Babylonian or Vedic times. At the international there is the *U.N. Charter; Universal Declaration of Human Rights, 1948; Covenant on Civil and Political Rights, 1966; Covenant on Economic, Social and Cultural Rights, 1966* amongst other instruments which compel the member nations to create an environment in municipal spheres wherein the human rights of the individuals can be meaningful. Different theories have been evolved regarding nature of human rights. All these theories are in agreement about the inviolable and inalienable nature of them. These rights operate as limitations upon the authority in order to secure life with human dignity. Human rights being classified into three generations *viz,*: first generation, second generation and third generation, address different dimensions of human life and activity.

The thread of morality is interwoven in human rights, for different religions have evolved and nourished principles for protection of human rights. Diverse theoretical bases have been evolved to support human rights. Although each of these is subjected to criticism, each one is imbued with rationale which cannot be so easily dismissed. In the present day scenario, theories based on natural rights, justice and dignity appear to be most acceptable. The human rights are provided constitutional foundation. The preambular promise of securing justice, liberty and equality along with dignity to every individual elaborated in the parts relating to fundamental rights and directive principles of state policy make the commitment of the Constitution to human rights manifest. This commitment is further reinforced by the fact that India is a party to all major international human rights instruments and has enacted domestic laws for the realisation of human rights.

7. REFERENCES

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