



Human Rights Law

Presentation - I

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Philosophical Foundations of Human Rights

❖ Where do human rights originate from?

- Human rights are moral entitlements emanating from the nature of being human; they emanate from the mere fact of being human; they are inalienable from the nature of humanity.
- The fact that humans cannot lead a dignified life without respect of the fundamental freedoms and rights indicates to the origin of human rights in the nature of human beings.

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- ❖ This internal nature is confirmed and magnified by universal morality, world religions, ancient and modern philosophy.
 - Are they essential or basic human needs with no discrimination on the basis of culture.
 - Human rights are not unlimited; they have a qualified legal boundary.

Historical Development of Human Rights (western narrative)

- ❖ Before WWII, they were referred to as natural rights on basis of the concept of natural law, that natural law justifies the respect for human dignity.
- ❖ There were some codifications, bills of rights before the WWII at national level but they did not reflect the full fledged concept of human rights as recognized in modern times.
 - They were **often** seen as rights conferred upon on the basis of rank or status.
- ❖ After middle ages, during Enlightenment, thinkers such as Grotius and Locke developed a comprehensive concept of natural rights.
- ❖ The happening of WWII gave an impetus for institutionalization of human rights at international level through UN Charter; and the lay down of minimum standards for human rights.

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- ❖ World Conferences & Human Rights Conventions
 - After the signing of the UN Charter by many states of the world, series world conferences on human rights were held to strengthen the international commitment of states for the respect, protection and fulfillment of human rights.
 - The conferences resulted in the backing up of the UDHR and the UN Charter by a number of general and specific human rights conventions, among which the ICCPR and ICESCR are oft-mentioned; and many supervisory mechanisms (organs) have been created.
- ❖ Besides the international attention, human rights have got a regional concern to the establishment of European, Inter-American, Asian and African human rights systems (Regional conventions and institutional frameworks).

Classification of Human Rights

- ❖ There are a number of perspectives based on which human rights are categorized, but the principle point is that they are universal, indivisible and interrelated.
 - It is said that indivisibility means no one right is more important than any other. Do you agree?
 - How about universality?
 - Are human rights universally true and applicable given that there are different cultures and thinking perspectives? (Universalists Vs. Relativists).
 - What does the classification itself imply?
 - Does it indicate that one may be more important than others?
 - Can there be a scenario where choosing one or set of rights is feasible and obligatory, justifying others to be restricted or derogated?

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- ❖ Besides the degree of importance, the classical categorization of human rights does not reflect their full nature.
 - What is the problem in the classification of human rights as classic (negative obligation) and social (obligation of conduct/result).
 - How about the classification as civil and political rights? What do these terms imply as different from one another?
 - What about the categorization as economic, social and cultural rights?
 - These names simply imply the various spheres of human life out of which the rights are deduced.
 - There was an allegation that civil and political rights are justiciable, whereas economic, social and cultural rights are not justiciable?
 - What does justiciability mean? Disputes that can be adjudicated by judicial organs.
 - Despite a long lived allegation of dichotomy between the two set of rights, the developments in later period across various national and international judicial organs shows the opposite leading to the conclusion that both are justiciable.

Classification ... Cont'd

❖ Individual and Collective Rights

- Those rights that are claimed and exercised by people in groups are referred to as Collective Rights. Ex: right to self-determination can only be claimed by a people as a group (rights of a collective); hence it is different from individual rights enjoyed in association with others (ex: right to culture).

❖ 1st, 2nd & 3rd generation of rights

- 1st generation rights refer to those set of rights that are developed and accepted in the 'formative periods' (European narrative) of human rights i.e. liberty (freedoms) entailing 'supposedly' a negative obligation on a state and individuals; these are civil and political rights.
- 2nd generation of rights are related to fulfillment of human needs – economic, social and cultural rights.
- 3rd generation or solidarity rights are late developments; they are group rights such as the right to development, right to peace and clean environment; but still these rights can be expressed in individual terms.
 - The right to self determination seems to be a pure collective right.
- Generally, the ground of classification on the basis of historical development and generation of human right shall not be taken to mean that there is a difference of weight attached to human rights; all have their own sphere of importance.

Material Sources of Human Rights Law

❖ There is a Human rights legal framework at international and domestic level

- International Human Rights Law

- As different from domestic legal systems, international human rights regimes has no single legislature and enforcing organ, in the same way as other branches of international law. Thus it shares one of the big problems of international law that it lacks enforcement and it is dependent upon self-enforcement. (according to positivism, international law is not law in the proper sense of the term; hence it can be concluded as a soft law).
- International agreements (treaties) constitutes a dominant material source of modern international law; and consistent practice of states (international custom) also takes the second binding source representing the consent of states.
- There are also other non binding sources of international (human rights) law that guide the behavior and conduct of states.
- Lets see some of the features of these sources.

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❖ International Human Rights Conventions

- General human right conventions: enumerating a wide variety of human rights in various spheres of human life.
- Particular human rights agreements: there are a number of specialized human right treaties focusing on a certain groups of people or on specific themes.
- The UN and its special agencies have been serving as a forum for the conclusion of human rights treaties, and lobby member states and signatories to abide by their international obligation. The same role has been played by regional human rights organizations.
- Those human rights covenants that are known as ‘int’l Bill of Rights” consisting of the UDHR, ICESCR, ICCPR and its two optional protocols have served as a basis for the promulgation of many general and specific human rights treaties and national constitutions afterwards.

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❖ International Human Rights Custom

- For a customary law to constitute a binding source of international (human rights) law, it should represent a 'general practice' among states with a sense that the practice is obligatory (*opinio juris necessitatis*).
- Customary international law has a peremptory norms (*jus cogens*) which are agreed to be high order norms from which no derogation or reservation is permitted; and even those states that haven't ratified the treaties have the same obligation emanating from the nature of international customary law.
- Those human right norms that belong to *jus cogens* are identified by the Human Rights Committee GC 24.

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❖ General Principles of Law

- These are principles deduced from judicial reasoning on the basis of the existing international laws.
- These principles serve, on the one hand, to fill the gaps of international laws in addressing the specific scenarios of human rights violations, and on the other, they guide judges and restrict their discretion in the interpretation and enforcement of human rights laws.
- Such principles are developed by international courts and national judicial organs
 - The principle of proportionality is a good of example.

❖ Judicial precedent and scholarly views of qualified publicists, NGOs such as Amnesty International are persuasive sources of international law including international human rights law.



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