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Historical Context of Human Rights: An Examination of Indian and Western Viewpoints

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Concept of Human Rights:

Before understanding the concept of human rights, it's essential to know about these three terms

1. Natural Rights
2. Human Rights
3. Fundamental Rights

What are Natural Rights?

Natural Rights are those Rights the basis of which is Natural Law, and the right to life, liberty, etc. are such rights. The concept of 'natural rights' is based upon the theory of natural law. The idea that people have certain rights that cannot be taken away began with the theory of natural law. According to this theory that detracts from man human qualities, or prevents their full achievement, violates the law of nature.

Meanings of Human Rights :

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 the human family, irrespective of any other considerations.

In other words, Human Rights are those rights which are inherent to all human beings without any discrimination of sex, nationality, colour, religion, language or any other status. Human Rights are associated with the dignity of the individual. Human Rights are rights that each individual should have. These are the most basics rights that protect a human from other humans. The basis of Human Rights is Morality and Humanity.

'**David Selby**' says, "Human Rights pertain to all persons and are possessed by everybody in the world because they are human beings; they are not earned, bought or inherited, nor are they created by any contractual undertaking.

According to '**Laski**', "Rights are those conditions of social life without which no man can seek, in general, to be at his best."

Meaning of Fundamental Rights :

Fundamentals Rights are rights that are granted by a government. These rights are awarded through the country's constitution and all people that fall under the jurisdiction of the constitution are granted these rights.

Historical Background of Human Rights: Western and Indian Approach

Historical Foundation of Human Rights

In 539 B.C., Cyrus the Great, the first king of ancient Persia, after conquering the city of Babylon, he freed all slaves to return home and he declared people had the right to choose their own religion and established racial equality. There and other decrees were recorded on a backed-Clay cylinder. The Babylonian King 'Hammurabi' issued a set of law to his people called Hammurabi's codes. It established fair wages, offered protection of property.

From Babylon, the idea of human rights spread quickly to India, Greece and Rome. 10

The Dharma of the Vedic period in India also represents different sets of standards by which right of one was respected by another. Philosophy of Plato, Aristotle, Hobbes, Locke, and Rousseau supported the right of individual. Various Human Rights documents – such as Magna Carta (1215), the petition of Right (1628), the US Constitution (1787), the French declaration of the rights of man and of the citizen (1789) and US bill of rights (1791) represents Human Rights.

Western Approach :

Historical Background of Human Rights

(1) Western approach and Human Rights

1.1 Ancient Greek and Roman Perspectives.

1.2 Human Rights in 17th and 18th century.

1.3 Human Rights in the 19th century.

1.4 Human Rights in the 20th century.

(1.1) Ancient Greek and Roman Perspectives: Though the international concept of Human Rights has its origin in the 20th century. Yet the Western idea of rights can be traced to the ancient Greek period.

(1.1) **Plato's Conception of Justice:** Plato Republic is called a treatise on justice.

According to Plato, Justice should be given to everyone in the ideal state. It's very essential for the harmonious growth of society. According to Plato, each individual should concentrate on one's own sphere of duty and not to meddle with the sphere of others. Thus justice depends and grows with the specialisation of functions. According to Dr. Ronse, "to do one's own business and not to meddle with many businesses".

(1.2) **Aristotle Conception of Private Property:** Aristotle justifies private property is the sense of pleasure. According to him, property is an essential instrument for the development of human personality and considered private property as natural right.

(1.3) **Roman Thinker:** Cicero emphasized upon the concept of universal brotherhood and his philosophy emphasized that all should be treated equally without any discrimination of caste, class, creed, language and sex.

(1.4) **Stoic philosophy** gave to the world the notion of equality based on the spirit of freedom and the notion of universal brotherhood based on universality of natural law's.

Human Rights in 17th and 18th Century:

Social Contract Theories

The social contract theories were very popular in the 17th and 18th centuries through the contribution of Hobbes, Locke and Rousseau...

Thomas Hobbes: According to Hobbes, the state of nature was a condition of war-might is right. Individuals were nasty, selfish and brutish. In order to secure life and property, they entered into a contract with each other and surrendered all their rights to one sovereign who might serve the liberty of all. In this way the state has been created.

"I authorise and give up my right of governing myself to this man, or to assembly of men, on this condition, that they give up their right to him, and authorise all his actions in like manner.

John Locke: John Locke was a supporter of individual freedom. Locke believed that in the original state of nature, peace and reason prevailed. In the state of nature, men lived under natural laws. The only defect of state of nature is lack of organisation, written laws and fixed Penalties.

Civil society came into existence by consent because man entered into contract to get rid of the inconveniences of the state of nature and thus state of nature changed into a political state. State came into existence for the welfare of individual.

To Locke, the individual is everything and the state is merely a means through which certain ends to be fulfilled. Locke is a champion of limited government and he subordinates the government to the community as the government exists for the welfare of the governed and can be removed if it violates the trust of the masses.

Rousseau: Rousseau was of the opinion that state is an artificial creation of individuals or a result of social contract. He opined that man is born free but in society he is everywhere in chains. The supporters of this theory considered Human Rights as natural rights because they are based upon a contract between people and state. They were of the view that when people entered into contract with the state, people shed some of their rights but certain basic rights like right to freedom and equality were preserved by them. Thus the concept of Human Rights was established. This theory inspired French and American Revolution.

The most important milestone in the development of the concept of Human Rights:

(1.1) Magna Carta (1215)

(1.2) Petition of Rights (1628)

(1.3) United States declaration of independence (1776)

(1.4) The declaration of the Rights of man in France (1789)

(1.1) **Magna Carta (1215)**

The Magna Carta was the first milestone on the roads of Liberty of the people of the England. It established new rights and making the King subject to the law. The supremacy of law was established.

(1.2) **Petition of Rights (1628)**

The petition of rights, setting out the rights and liberties of the people as opposed to the British crown.

(1.3) **United States declaration of independence (1776)**

The United States declaration of Independence proclaiming the right of life, liberty and the pursuit of happiness. It was first civil document met modern definition of Human Rights, America's independence in 1776, giving birth to a new nation known as United States of America with enforceable bill of Rights.

(1.4) **The declaration of the Rights of man in France (1789)**

In France, establishing that all citizens are equal in the eyes of law.

Human Rights during 19th Century ,In the 19th century, the Industrial Revolution came into existence. As a result,

society divided into two classes – capitalist and labour class. Capitalist class owned all means of production and also captures state power and authority. This division led to the exploitation of the labour class. Karl Marx, a great philosopher of 19th century, gave the ideology of Marxism. Marxism wanted to end the exploitation of labour class by eliminating the capitalist system. He emphasised the welfare of the labour class.

Human Rights in 20th Century

20th century witnessed two World Wars. After World War I, the League of Nations came into existence through the treaty of Versailles. The league did valuable work in protecting and promoting Human Rights. For instance – it adopted measures to check trafficking in women, to raise the age of marriage, to ensure child welfare and to secure resettlement of thousands of refugees.

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Establishment of UNO, 24 Oct, 1945

Failure of League of Nations led to the World War-II. After the World War-II, for the maintenance of international peace and security and to prevent the World Wars, International Organization – UNO was established on 24 Oct, 1945. The commission of Human Rights Constituted in 1946 under the chairmanship of Roosevelt. The commission prepared a draft declaration of Human Rights was

submitted to the General Assembly in Sept, 1948. Finally, the **Universal Declaration of Human Rights was adopted by 48 states on 10 Dec, 1948. The declaration consisted of 30 articles covering both civil and political rights and economics, social and cultural rights.**

Human Rights from Indian Perspective

1. Human Rights in Ancient Indian Society

2. Human Rights in Medieval India

3. Human Rights in Modern India.

The earliest traces of idea of Human Rights date back to more than 4,000 years. Rigved is considered as one of the oldest sources of Human Rights in the world. Dharma is the greatest and most valuable contribution to India to humanity. Arthashastra played a vital role in defining the code of conduct and duties of ruler. Different rulers such as Ashoka the great, Harshvardhan worked for the welfare of general masses. Edicts issued by Ashoka the great is a significant example of Human Rights. Mughal emperor – Akbar, concept of Din-e-Illahi supported the secularism and universal brotherhood. In British India, India's struggle for freedom and legal reforms made by British government from time to time proved to be foundation of making of Indian constitution.

1. Human Rights in Ancient India

1. Vedas

2. Concept of Dharma

3. Kautilaya's Arthashastra

4. Reign of Ashoka and Harshvardhna's

There are various theories on the origin and evolution of Human Rights.

Positive law approach explains the origin and development of Human Rights from law while natural law approach explains it as being embedded in basic human nature.

There are religious theories that maintain that Human Rights developed within a moral context. Such moral ground as the foundation stone of Human Rights is found in the various ancient Hindu text.

1. Vedas

Hinduism doesn't recognise Human being as mere material beings. Its understanding of human identity is more ethical-spiritual than material. 30 There are many references in the Vedas, which throw light on the existence of Human Rights in India. The Vedas proclaim – Liberty of body (Tan), dwelling

house (Skridhi) and life (Jibase).

Athar Ved also provides for Human Rights such as Right to food and shelter.

“All have equal rights to articles of food and water the yoke of the chariot of life is placed equally on the shoulders of all. All should live together in harmony supporting one another like the spokes of a wheel of the chariot connecting its rim and hub”. –Artha veda, Sanynanana Sukta

According to Rigveda – No one is superior or inferior; all are brothers ; all should strive from the interest of all and progress collectively.

–Rig veda, Mandala-10, Sukta-191, Mantra-04

2. Concept of Dharma

More than five thousand year ago, the ancient Indian Philosophers and Thinkers interpreted a theory of higher moral law the aim of which was to establish harmonious social order by striking a balance between spiritual and material aspects. It was the concept of Dharma which governed in an integrative manner all civil, religious and other actions of men in society be it King or his subject.

The law of Dharma tried to build organised social life and every individual whether ruler or ruled is governed by his/her Dharma. The term ‘Dharma’ derived from the Sanskrit root ‘Dhr’. It means to ‘Sustain, Support, uphold.” Dharma also refers to a code of moral principles relating to the daily lives and following these rules ensures peace, prosperity and happiness. The Science of Dharma is known as Dharmshastra. According to ‘Rajadharma’, The King was given power only to enforce the laws of Dharmshastras and it did not authorise King to make changes in the laws and it also laid down the laws and governing the conduct of the King himself.

3. Kautilaya’s (Arthashastra)

Kautilaya’s Arthashastras refers the rights and duties of rulers, ministers, priests, soldier, paople etc. The King duties in the internal administration of the country are three fold.

(i) Raksha – Protection of the state from external aggression.

(ii) Maintenance of law and order.

(iii) Yogakshama – Safeguarding the welfare of the people. The

Arthashastra also refer to the women right to property.

4. Reign of Ashoka and Harshvardhna’s

Ashoka, the Maurayan emperor followed Buddhism and established ideal state and constructed many roads, trees were planted on both sides of road, wells were dug and hospitals were also constructed.

Harshvardhna's administration resembles that of Mauryas and Guptas. He always tried to do something for the welfare of people often he disguised himself like an ordinary man and wandered in his country for the welfare of his subjects.

2. Human Rights in Medieval India

As Medieval period signifies Mughal era. The concept of Human Rights suffered a great set-back and got lost in darkness due to the inhumane and cruel acts Of Mughal emperors towards Hindus, but during the Akbar period regard was given to the social, religious and cultural rights. In his religious and cultural rights. In his religious policy (Din-e-illahi), he tried to preach the idea of secularism and religious tolerance. Various religious movement like Bhakti (Hindu) and Sufi (Islamic) made remarkable contribution to the emergence of Human Rights.

3. Human Rights in British India

The history of modern India started with the advent of Britishers. British The government followed discriminatory policies towards Indians an every sphere of life and treated them in a very inhumane manner. Indians were denied of rights such as lack of freedom of speech and expression lack of equality, there was censorship of press. As a result, Indians started demanding their rights and wanted end of british rule. Leaders like Mahatma Gandhi, Lokmanya bal Gangadhar Tilak, Bipin Chander Pal, Subhash Chander Bose etc. played an eminent role in India's freedom struggle. National organization–Indian National Congress which was formed in 1885 played an important role in representing the will of the general masses. During this period, Indian society suffered a lot from orthodox and superstitious ideas. Various philosophers, reformers and thinkers of modern India gave their ideas for reforming society. Raja Ram Mohan Roy opposed the Sati System, it was due to his efforts British governor William Bentinck banned the Sati System.

Similarly Swami Dayanand Saraswati gave the rational ideas for removing the ignorance, orthodox and conservative practices prevailed in Hinduism. He opposed the idol worship and caste system. He raised slogan "Back to Vedas" and he was the first who gave the idea of "Sawaraj".

Swami Vivekanand also worked for the welfare of humanity. 'Jyotiba Phule formed "Satya Shodhak Samaj" with the objective of liberating of Shudras to prevent their exploitation by brahmins and also worked for the upliftment of women. British government passed administrative reforms from time to time. The main objective to pass such reforms was to suppress the Nationalism in Indians by awarding few benefits and Administrative reforms such as Regulating Act 1773, Pitt's India Act

(1784), Charter Act 1833, Indian Council Act 1861, Act of 1892 (Minto-Morley reforms), Government of India Act 1935. All these acts proved to be milestone in forming the constitutional history of India.

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