
RIGHTS & FREEDOMS: FROM KINGSHIP TO MODERN DEMOCRACIES

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ABSTRACT

Humans, anthropologically have earned rights and obligations by their participation in a group throughout most of history, whether it was a family, community, class, religion, state or indigenous country. Most communities have customs that are akin to the "golden rule," which states, "Do unto others as you would have them do unto you." Five of the oldest written texts that address concerns of people's obligations, rights, and responsibilities include the Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran (Koran), and the Analects of Confucius. Furthermore, the Inca and Aztec standards of conduct and justice, as well as an Iroquois Constitution, were Native American texts that predated the 18th century. In truth, all communities have had systems of propriety and justice, whether through oral or written history. Modern democracies depend upon their respective constitutions to be the touchstone of the degree to which these freedoms and rights are given to their citizenry. The contrast between eras of dynastic kingships & monarchies, where power was handed down in the bloodline so as to maintain its legacy and concentration, and modern democracies, where power usually lies with a definite document or constitution which both defines as well as limits it, and the juxtaposition between their means of derivation of this authority and power with respect to countenance of freedoms and rights is a matter that requires some more thought and insight.

Introduction

“Men are born and remain free and equal in rights” and that “the aim of every political association is the preservation of the natural and imprescriptible rights of man.”-Marquis de Lafayette, a close aide of George Washington and who shared the experience of the American Revolution, imitated the pronouncements of the English and American revolutions in the Declaration of the Rights of Man and of the Citizen of August 26, 1789.

Human Rights and Natural Law

The concept of equality of all human beings by birth possessing equal inherent rights dates back to the dawn of human civilisation, it is anchored in history, and is related with the struggle of individuals against injustice. Although the phrase "human rights" is relatively new, the idea that a person has some basic, inalienable rights against a sovereign State has its roots in Natural Law. Classical Natural Law and more modern liberal and individual Natural Rights are historically linked and convey moral notions rather than legally enforced laws. This gives rise to a contradiction with modern-day legal positivism. According to legal positivism, the only meaningful legal standards are those prescribed by enforceable positive law (the actual law of the actual state). Legal positivism emerged as a critique of Natural Law in the 18th and 19th centuries, expressed by John Austin and Jeremy Bentham.

One of the most important question that comes to one's mind is the genesis of these freedoms and rights; their nature and their future. The following fundamental issues remain unresolved: whether human rights are to be seen as divine, moral, or legal entitlements; whether they are supported by intuition, culture, custom, social contract, distributive justice principles, or exist just as prerequisites for happiness or the achievement of human dignity; whether they are to be understood as irrevocable or partially revocable; and whether they are to be broad or limited in scope. Even when the principle of human rights is upheld, there are still disagreements about whether or not to prioritise narrowly defined special interests over the public interest, whether or not progressive elites use human rights as a tool to gain political mileage.

The battle against political absolutism in the late 18th and early 19th centuries was greatly aided by the concept of natural rights being the forerunner to the modern understanding of human rights. In fact, this was actually caused by rulers who did not uphold the ideas of freedom and equality of their subjects. Since centuries, the idea of the divine right of monarchs has been adopted into many political structures all across the world and has been one of the

major sources of oppression and violation of Human Freedoms & Rights. It is believed that it is by the mandate of God that the kings rule, and he is only answerable to God, but this also by extension leads to the understanding that only the people with the divine right to rule possess unpronounced rights and freedoms and the subjects of such a ruler acquire their freedoms and rights as permitted by the ruler.

Let us understand the divine right to rule for better clarity on this.

The Divine Right of Kings

Kingship was frequently viewed outside of Christianity, particularly in religious civilisations (such as Muslim and Jewish communities), as either being supported by heavenly forces or even being exercised by supernatural beings themselves. Example:-The prophet Samuel anoints Saul and later David as the Messiah ("anointed one")—king over Israel. This account is where the Christian idea of a divine right of monarchs originates. According to Jewish tradition, the absence of a ruler who was anointed by God left the Israelites vulnerable, and the promise of the "promised land" was not completely realised until a king was anointed by a prophet acting on God's behalf. Therefore, opposing a ruler was viewed as equally sacrilegious and blasphemous as questioning God. In effect, the monarch served as a substitute for God and could never be questioned "without the challenger being convicted of blasphemy" unless it was by a prophet, which the church took the place of, in the case of Christianity. In medieval Southeast Asia, the "god-king" or deified ruler was represented by the religious order known as "devaraja." Depending on the region, the devaraja order developed from both Hinduism and other local customs. It claimed that the king was a representation of Bhagawan and a celestial global sovereign (God). The idea held that the king was the earth's living god and had transcending qualities. The idea is quite similar to the Bharati idea of Chakravartin (universal monarch). It is seen in politics as the justification provided by God for a king's reign. Ancient Java and Cambodia, where structures like Prambanan and Angkor Wat were built to commemorate the king's divine authority on earth, was where the idea was institutionalised and given its grandiose forms. The Indianized Hindu-Buddhist kingdoms of Southeast Asia embraced the devaraja notion of kingly divine prerogative thanks to Indian Hindu Brahmin academics stationed in the courts. It was initially embraced by Javanese rulers, who later passed it on to other Malay kingdoms, the Khmer empire, and finally the Thai dynasties. In India, the monarch, who serves as the state's only ruler, is addressed throughout the Arthashastra and according to Kautilya, the Matsyayana, or law of fishes, which states that the larger fish

consumes the smaller fish, oppresses the populace. God created the monarch at this time, the first of his kind, and gave him the name Manu. Kautilya thus regarded the first monarch of earth as having celestial rank. It was claimed that these rulers served as earthly equivalents of Gods like Indra and Yama. For showing disrespect to the king, people received punishment. In exchange for the unconscious acceptance of these norms, the king's first and most important duty is to safeguard the lives and property of his subjects along with a responsibility to protect the populace against criminals and natural disasters like earthquakes, fires, and floods. In Indian culture, it is commonly accepted that the king's pleasure is correlated with that of his subjects.

The basic tenet of the divine right of kings is that a king or queen has undisputed authority because God has granted it to them. It implies that the monarch has enormous control over people's life, their freedoms and their rights; and that he is solely responsible to God and not to his subjects. A monarchical system in which the king possesses unquestionable authority over his subjects and is also referred to as absolutism and it inherently leads to tyranny, oppression, as well as denial of the rights and freedoms of the laymen. It is believed that passive obedience, or the ready acceptance of any penalties imposed for non-compliance, is required when active adherence to a bad ruler is ethically immoral. The idea that God prefers monarchies and that rebelling against a king or queen is seen to be an act against God is unacceptable in today's day of evolving democracies.

Over time, a variety of voices opposed the king's divine right to rule, in early modern times, Thomas Paine and poet John Milton in their respective pamphlets *Common Sense* and *The Tenure of Kings and Magistrates*. John Locke's *Essay concerning The True Original, Extent, and End of Civil-Government* and Thomas Jefferson's formulation in the United States Declaration of Independence that "all men are created equal" are probably the two most well-known statements of a right to revolution against tyranny in the English language. All people, according to Locke, are equal because they are born with certain "inalienable" natural rights. That is, rights that were bestowed by God and are inalienable. "Life, liberty, and property," according to Locke, are three of these essential inherent rights.

“What are we having this liberty for? We are having this liberty in order to reform our social system, which is full of inequality, discrimination and other things, which conflict with our fundamental rights.”-Dr. B. R. Ambedkar.

Status of Human Rights in Modern Democracies

The Constitution of the United States of America, which was drafted in Philadelphia during the summer of 1787, is the cornerstone of the Western world and the fundamental legislation of the US federal form of government. The primary branches of government, their spheres of influence, and fundamental rights of people are all outlined in the oldest written constitution still in existence.

The United States' federal government's authority was constrained and the rights of all citizens, residents, and visitors to American territory were safeguarded on December 15, 1791, when the first 10 amendments to the Constitution, known as the Bill of Rights, came into force. The freedoms of speech, religion, the right to keep and bear arms, the right to assemble, and the right to petition are all protected by the Bill of Rights. Additionally, it forbids coerced self-incrimination, harsh and unusual punishment, and arbitrary search and seizure. In addition to other legal safeguards, the Bill of Rights forbids Congress from passing laws relating to the establishment of religion and forbids the federal government from denying anybody their life, liberty, or property without following the right legal procedures. In federal criminal matters, it mandates grand jury indictment for any capital felony or notorious crime, ensures a prompt public trial in the district where the crime was committed with an unbiased jury, and outlaws double jeopardy.

The idea of equal rights and freedom for all has been a deeply held ideal for the French ever since the French Revolution (1789), with its distinctive emphasis on Liberty, Equality, Fraternity, and Republicanism, and the subsequent adoption of the Declaration of the Rights of Man and of Citizen. Together, the French Declaration of Rights and the American Declaration of Independence have established a strong foundation for liberalism and the democratic system of governance. The Fifth Republic's Constitution upholds a belief in the people's rights, freedoms, and sovereign equality. As per the Articles of the French Constitution, the Constitution guarantees equal rights to men and women, Every person has the right to safeguard his rights. For this purpose, he can join and form Trade Unions, within the limits prescribed by law, every person has the right to strive for securing his legitimate rights, every worker has the right to participate in the determination of collective agreements in respect of the working conditions of his profession. The state is obligated to provide facilities for the growth of each individual and his family, and the institution provides physical security and the security of health, relaxation, and leisure to all, particularly children, mothers, and the elderly. The

Constitution guarantees general education, professional education, and training to all children and adults, and it is everyone's responsibility to accomplish their jobs and have the right to work. On the basis of equality of rights and duties, irrespective of their religions, the people of France form the French Union. If any person's freedom is abused in another nation, he may seek refuge in France. All such people can find refuge in France. All French citizens enjoy equal civil and political rights. Liberty, equality, and fraternity are recognised as the goals of the republic in Article 1, and the people are given political rights in Articles 2 and 3. Human rights have been strongly supported by the French Constitution. The formal constitutional guarantees for the security and preservation of rights are not included, nevertheless. There is no constitutional protection for them. These are the kind of solemn declarations that France always abides by. These have the support of France's history and customs.

In India, with 448 articles and 12 schedules, the Indian Constitution is the world's longest written Constitution. The concept of Fundamental Rights and the Preamble being borrowed from the Constitution of United States of America and the ideas of Liberty, Equality, and Fraternity in the Indian Preamble were taken from the French Constitution. In the tradition of the French Constitution, the Indian State eventually gained recognition as the "Republic of India." Fundamental Rights are covered under Articles 12-35 of the Constitution and these fundamental human rights are granted to all citizens of India with their inviolability being explicitly & implicitly stated in the ever evolving Constitution itself. These rights are called 'fundamental rights' because of two reasons: 1. They are enshrined in the Constitution which guarantees them, 2. They are justiciable i.e. enforceable by courts. In case of a violation, a person can approach a court of law. There are currently six fundamental rights in the Indian Constitution along with the following constitutional articles related to them: Right to Equality (Article 14-18), Right to Freedom (Article 19-22), Right against Exploitation (Article 23-24), Right to Freedom of Religion (Article 25-28), Cultural and Educational Rights (Article 29-30), Right to Constitutional Remedies (Article 32).

There used to exist another fundamental right in the Constitution, i.e., the right to property. Right to Property used to be another Fundamental right but is not so anymore, this right was removed from the list of fundamental rights by the 44th Constitutional Amendment in 1978 since it was held by the legislature that this right proved to be a hindrance towards attaining the goal of socialism and redistributing wealth and property equitably among the people. The right to property now exists as a legal right and not a fundamental right. In terms of how they

are upheld, fundamental rights differ from traditional legal rights. If a legal right is breached, the victim cannot go straight to the Supreme Court without going through the lower courts in the first place. He or she ought to start by the lower courts and proceed up the ladder to finally reach the highest judicial court of the land. Recently, right to privacy and right to internet have also been included in this list of Fundamental Rights. Another point to be noted is the fact that all citizens of India have access to some essential rights, whereas everyone, including citizens and foreigners have access to the remaining ones. It is to be duly noted that fundamental rights aren't absolute rights and are subject to reasonable restrictions, such as those imposed by public morals, public decency, and cordial ties with other nations. They are justiciable, which means that courts can enforce them hence in the event of a breach of basic rights, individuals may immediately approach the Supreme Court.

Hence every governing establishment derives authority to rule based upon the peoples mandate which is ultimately gained upon providing and accountably guaranteeing to the people their Freedoms and rights. In the case of the above mentioned vibrant and inclusive democracies, the access to such rights and freedoms is more freely available than in the case of Authoritarian regimes such as those in North Korea, China, Belarus, Saudi Arabia, Pakistan and very recently Myanmar among others.

Conclusion

Individual rights declarations such as the Magna Carta (1215), the English Bill of Rights (1689), the French Declaration of the Rights of Man and Citizen (1789), and the United States Constitution and Bill of Rights (1791) were written antecedents to many of today's human rights texts. However, when translated into policy, many of these papers excluded women, people of colour, and members of particular social, religious, economic, and political groups. Nonetheless, oppressed people all across the world have used the concepts expressed in these writings to support revolutions that claim the right to self-determination.

No matter the nationality, where one resides, sex, place of birth (national or ethnic), skin colour, religion, dialect or language, or any other characteristic, an individual has the inherent right to certain freedoms known as human rights. Without segregation, we are all equally qualified to exercise our human rights. All of these rights are connected, linked, and unwavering. The law, in the forms of treaties, generally accepted international law, general norms, and many sources of international, routinely communicates and ensures the rights of all people. In accordance

with international human rights legislation, governments are required to follow particular procedures or refrain from engaging in certain behaviours in order to advance and safeguard human rights and fundamental freedoms of individuals.

A key document in the development of human rights is the Universal Declaration of Human Rights (UDHR). The Declaration, which was written by delegates from all around the globe with varying legal and cultural backgrounds, was adopted as a common benchmark of accomplishments by the United Nations General Assembly in Paris on December 10, 1948. It has been translated into more than 500 languages and for the first time lays out the need for all people to have access to basic human rights protections. More than 70 human rights treaties are currently in force at both the global and regional levels thanks in large part to the UDHR, which is widely acknowledged as having cleared the path for their approval. It aims to improve human rights at the social, political, and residential levels. Global human rights law is a type of international law that is primarily made up of agreements, which are agreements between sovereign states to have a limited legal impact on the groups who have agreed to them, and general universal law, which are rules of law derived from the predictable direct of states acting in a certain way because they believed doing so was required by the law. While not legally binding, other international human rights treaties contribute to the application, understanding, and advancement of general human rights legislation and have been seen as a source of political duty.

Despite these efforts, further changes need to be made by means of education and awareness, globally, to imbibe in every mind the idea of Human Rights and Freedoms as an innate & inseparable asset that a human being is born with, and these rights and freedoms actually define & make that person a complete human. Every ruling, governing, executive or judicial authority or any person in a position of power shall respect these innate rights and freedoms and in fact shall uphold them in the highest regard and shall strive so as to never violate them without following the due process of law and if is forced to do so, shall only be as a last resort, so as to help safeguard the same freedoms and rights of the rest of the populace in the society. No divine, politically, or dynastically acquired bearing can ever be in the position to justify their unilateral violation and if done so, a global legally binding mechanism with no hegemony needs to be devised and put in place so as to guarantee these innate rights and freedoms to all humans irrespective of any differentiating factor between them. Rather, people in such positions of

power shall venture to allow these innate rights as well as hand over further acquired rights as per the evolution of modern societies without prejudice of any kind.

"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 civilisation at a given moment in history," says the French philosopher Jacques Maritain (1882-1973) in his text "On the Philosophy of Human Rights", sent from Rome in June 1947, in response to UNESCO's survey about the philosophical foundations of human rights. "And it is for this reason, that after the considerable conquest constituted at the end of the eighteenth century by the first written formulations, there is now a major interest in renewing these declarations from century to century."

-Jacques Maritain

(French philosopher and political thinker)

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