



## HUMAN RIGHTS & SOCIAL JUSTICE

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### INTRODUCTION :

Human history is the witness of many battles that has been fought between man and animals for their struggle initially for the survival of the fittest gradually takes the shape of **racism** between black and white. Blacks were segregated and even legally discriminated against in the pre-Civil Rights America which further resulted in the much ashamed **slavery** system. And as the result of the apartheid, Gandhiji was forced to get down from the running train in South Africa under British raj. Further, this racism leads to **casteism** where the people of higher caste exploit the lower caste. **Casteism** mistreated the so-called **dalits & harijans** in medieval India. This also leads to **sexism** and in turn to **male chauvinism**. Women were not allowed to exercise their right to vote in some parts of the world and were debarred to take part in political decision making. It is also in practice in different parts of India that dalit women were paraded naked by the upper caste people. Even there is life threat to the girls (Malala, the Pakistani girl & the Nobel peace prize winner) for pursuing education by different groups of religious fundamentalists. I have mentioned only a few here. The list will go on which raises the eyebrows of cross sections of the people of the society. What these problems actually tell us? It emerged as a social/political necessity when some very undesirable happenings in recent past resulted in serious violation to the basic rights of a sizable section of human beings. Where do we go wrong? Whether all human beings should be treated equally or not? Can there be a right to violate rights? This makes room for the discussion of human rights.

In this paper, attempts are made to analyse the meaning, source and justification of human rights, and second, - how human rights are conceptually linked to social justice. Rights and justice as understood refer to human beings and human society. I shall try to argue that human rights are the primary rights in relation to the other forms of rights about which we all speak with equal passion and moral sensitivity. If at all the concept right is used in case of other non-human animals and inanimate objects (environment, river, mountain etc.), it is done so only in a derivative and secondary sense.

**Claims for Rights:**

The talk of rights is so much common that it has been assumed as the part of the standard of civic society. However, the awareness of and claim for rights came much later in human history out of necessity. It is the Renaissance and reformation that started in Western Europe as a consequence of enlightenment recognized the individual as an important factor in society. The ideas of Hobbes, Locke, Rousseau, Bentham, Mill and others played a very crucial role in this regard. The conflict and fight between the haves and have-nots is really a fight for liberty, equality and justice. Therefore, it emerged as a social/political necessity. And the fact that such deliberate discriminations and mistreatment of human beings could be effected within the purview of state laws led to grave concerns and serious brain-storming among conscious people and intellectuals, who were stirred to look for philosophical justification of human rights. The French Revolution, American war of independence, Russian Revolution and number of freedom fights and war of independence including the one that took place in India stand testimony to the fact how people were conscious of their right and made struggle for liberty, equality and justice.

For this reason several theorists tried to provide firm foundations for human rights which could justify the claim that people do have some fundamental rights that are primary and inalienable, even if the powers that be may refuse to acknowledge that. It is argued that the basic human rights have not been created. "They saw these rights as belonging to men simply by virtue of their very nature, by virtue of the fact that they are all human beings."<sup>1</sup> Because of this, human rights are often referred to as natural rights, and they are used interchangeably. The concept of human right is inherently moral and its language is not the language of 'Is' but the language of 'Ought'. In other words, to say that man is born with certain natural right is to treat man as an end but not as a means. The authenticity of natural right has been challenged and nobody knows who created the natural rights and when. Further, nobody knows which rights are to be enlisted as natural rights. During the second half of the last century the world witnessed a major resurgence of interest in human rights: the Civil Rights movement in America had a great impact not only on that country's political and social life but had profound reflections on that of the global community. Foreign policies of nations came to be largely shaped with expressed emphasis on human right violations by mutual adversaries, examples of which are not scanty in recent political history. The fact that the concepts of natural right and human right have gained so much currency in the world today; it is clear that it stands on solid ground. Now, the question is: what happens when there is violation of natural right or human right? Such violation definitely results in moral degradation.

The notion of human rights is inalienably linked with the concept of social justice. For justice is fairness and giving everyone his due, and so unequal and discriminative treatment of men are blatantly unjust and violation of fundamental rights of men. As violation of these rights disturb the balance of equitable distribution of the primary social goods, the demand for restoring the balance becomes imperative for ensuring recompense. Affirmative actions of post-Civil Right America and the reservation provision in independent India are cases in point. Thus ensuring social justice, human rights assume the status of primacy.

**Reasons for Human Rights:**

The importance of human rights becomes clear only when we focus on the meaning and implication of "rights". It issues from the fact that rights exist because we are moral beings. And since as moral beings, only persons can be said to be the subjects of rights or the right holders in the strict sense of the term because they have free choice, a sense of right and wrong, ability to perceive whether rights are exercised properly or not. Therefore, only persons can be said to be the right promoters or subject of rights. Kant said "treat other human beings as ends, not as means towards your or other people's ends. When I deal with you I should realize that you are, like me, a volitional being with abilities, needs and desires just as I have- and that I should treat you with the same respect with which I myself wish to be treated. I am not an instrument for serving your ends, nor are you an instrument for serving mine."<sup>2</sup> Human rights are therefore rights in the primary sense where as other forms of rights, like animal rights and rights of inanimate things such as nature and the environment, are significant in a secondary and extended sense.

Only human rights can be properly said to be inalienable and even absolute, because these rights are entailed by some crucial features of human nature. These features, by virtue of which people have the rights they are said or supposed to have, some "right-making properties; some have also called them right-conferring properties"<sup>3</sup>. "These properties are so called because their presence in us justifies our holding the rights in question; they confer on us the relevant rights."<sup>4</sup> Only those properties of human nature are right-making, in the absence of which human beings would not be called as human beings. Both Hinman and Prof. Mohapatra mentioned about two criteria that must be used to determine such properties. First, they must be essential to being human: "the more essential a property is to being a human, the stronger it will be a right conferring property."<sup>5</sup> And second, "the right-conferring properties must be moral nature, must be morally good or at least morally neutral."<sup>6</sup> The first criterion excludes the inessential or accidental properties, without which one's being human will neither be totally affected nor even be diminished. But restricting one's freedom of expression and even expression of religious beliefs will considerably affect his being a human person. As Rawls made it clear, freedom of conscience and association and freedom of thought and political liberties are the basic needs for individuals to exercise rights with dignity and self-respect and to exercise their capacity for a sense of justice."<sup>7</sup> The second criterion points to the moral dimension of the right-making properties. It excludes the features of persons that are definitely immoral or morally undesirable. In considering the criteria for legitimately right-making properties, distinctively human properties like rationality or the ability to think and judge, autonomy or the ability for free choice and voluntary action and the ability to value stand out as prominent candidates. No such or parallel properties can be ascribed to animals and the inanimate things to count as right-making properties.

The reciprocity between rights and duties which is of the nature of morally obligatory makes human rights primary. If I have a right, other people have the corresponding duty or responsibility to fulfill the right and not to violate it. These others and the system are usually called the right observers, according to Prof. Mohapatra,

whose duty it is "not to interfere with the exercise of the rights in question by the right holders and, if need be, to cooperate by providing, or creating the conditions conducive to such exercise."<sup>8</sup> These other members of the society are called the "right promoters", who promote, or are supposed to promote, the rights by performing both these negative and positive duties and indirect and direct duties. Obligations to promote rights are essentially moral and belong to the beings whose nature it is to be moral. In view of this correlativity and complementariness between them, rights and duties are the prerogative of persons or human beings. It is reciprocity, the very basis of morality, which binds the right holders and right promoters logically or conceptually together. The paradigm right holder is therefore the human person and human rights are the primary rights. That does not mean that there is no other form of rights. Rights of animals and nonhuman things do make sense but in the absence of the desired reciprocity in respect of the corresponding duties. They have rights only in a secondary and extended sense. Though on moral grounds we should act for the sake of or on behalf of animals, it is impossible to act on behalf of inanimate things like nature and the environment. Duties are moral obligations to be fulfilled by moral agents and valuing beings which animals and inanimate things are not. Therefore, human rights are primary rights.

**Rights Being Absolute:**

The 'Strong Rights' theorists like Ronald Dworkin and Alan Gewirth plead for the natural/human rights to be inalienable and absolute - not to be overridden by any other right or any other moral consideration. John Rawls considers basic liberties as not only more important than others but also as inalienable: "any undertaking to waive or to infringe them are void ab initio."<sup>9</sup> Even the most fundamental of natural rights are not absolute and inalienable in the strict sense. To be sure, the most fundamental of them, like the right to life, liberty and property, inalienable and absolute though they generally are, may be forfeited for misuse or suspended in extraordinary circumstances like committing a serious crime e.g. murder, or in the interest of national security as in the case of a national emergency. Each of us has some absolute rights to fulfill his life's purpose, but the society has an end to achieve in the general interest and none of us should pursue his objective in a way that would frustrate the social goal. Morality, said T.M.Scanlon, is a "mutually beneficial constraint on the conduct of rational persons"<sup>10</sup>. Rights, which essentially are moral in nature, are subject to such constraints or limitations in demanding situations.

Rights, therefore, are inviolable and inalienable, which they are supposed to be, despite being defeasible<sup>11</sup> under circumstances, which they will have to be in keeping with the demands of practical reason. With this provision that rights are defeasible in conflict situations, even the most fundamental of the human rights, such as the right to life, liberty and property, can be said to be basic and absolute but never overriding by definition.

The notion of human rights is inalienably linked with the concept of social justice. It may be stated in this connection that as individual and society cannot be separated from one another, similarly human rights and social justice cannot be isolated. In other words, to talk of human right one has to talk of social justice and vice versa. Further, the

concept of social justice is not intelligible without reference to individual and society. As a matter of fact, individuals are concrete living beings occupying space-time where as society is an idealized version of hopes, expectations and ambitions of the individual. Therefore, social justice means justice for the individuals taken together. There cannot be social justice which is not good for the individual and there is no human right which is anti-social or against the society. Thus, human rights and social justice are conceptually integrated.

Justice and equality are conceptually interlinked. For justice is fairness and giving everyone his due, and so unequal and discriminative treatment of men are blatantly unjust and violation of fundamental rights of men. As violation of these rights disturb the balance of equitable distribution of the primary social goods, the demand for restoring the balance becomes imperative. Rawls said that if everybody has equal right to the basic liberties unless an unequal distribution of any social value is to the advantage of everyone then the notion of justice bears clear stamp of equality on it. And the formula for social justice would be-treating similars, similarly and dissimilars differently."The principles of justice are distinguished from other principles of morality by being governed by the ideal of equality."<sup>12</sup> Therefore, the other name of social justice is distributive justice. It stands for equitable distribution of national assets. Philosophers like Bertrand Russell and others pleaded for equitable claim of all people to all the assets in the world irrespective of national boundaries and nationalists. It sounds utopian and equal distribution of assets in this sense is neither desirable nor possible.

The champions and protagonists of social justice aim at eliminating all forms of discrimination, inequality, exploitation and oppressions from human society. The purpose of every fundamental right of the individual is the complete elimination of social injustice of all forms and to establish a just society. Now a day, this becomes a far cry. Corruption is rampant in almost all the corners of the society. The poor becomes poorer and the rich becomes richer. For Gandhiji, psychic change in the individual level is the precondition for social justice. Society is like an organism. The interdependence and interrelatedness of all human existence in particular and of all existence in general contribute for the order of the society. Social, judicial and intellectual activism are the weapons to bring social justice. Affirmative actions and reservation policies of India are cases in point. Social justice is not only a fanciful concept but also a method; the method of achieving and safeguarding human right.

## REFERENCES

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