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Unpacking the Jurisprudential Dimensions of Human Rights Law

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ABSTRACT

The jurisprudential sense of the dimensions of human rights law is derived from the scrupulous evolving consciousness in human dignity and equality, according to the students of thought such as Carl Jung. Human right by nature, an embodiment of freedom and liberty, is rooted in the realization of innate moral principle. The Kantian theory received human dignity on the ground of rational autonomy and viewed natural rights as inherent rights to life, liberty, and property according to Lockean natural law—the very principles on which the Universal Declaration of Human Rights (UDHR) rests. The natural law school carries the argument a step further, establishing the link between law and morality, and thus positing that rights are derived from universal moral truths. On state of nature, the three social contract theorists-Hobbes, Locke, and Rousseau-exhibit different versions, illustrating current issues of human rights, especially regarding inequality and power imbalance. Though Bentham's utilitarianism is majoritarian, it must be seen in contrast to Mill's harm principle, which fits in with the preventive essence of human rights. The Marxist critique brings to the fore issues of neighboring dislocation particularly around formal equality usually being given little consideration in the event of material inequality, expressing forms of socialism in the UDHR. Rawls' veil of ignorance creates the possibility of impartiality in law-making by introducing substantive equality, as in some constitutional guarantees such as Article 14 of the Indian Constitution. Feminist critiques challenge the male-centric origins of human rights, advocating for gender-inclusive interpretations to achieve true equality. Human rights law is indeed a living framework molded by philosophical, political, and social discourses in totality within which the individual

makes its autonomy balanced with collective welfare. The evolution of human rights law indicates a virtue of unceasing commitment towards dignity, equality, and justice, where they make the law of future issues appropriate to address societal challenges.

KEYWORDS

Human Rights, Jurisprudence, Dignity, Equality, Social Contract, Natural Law, Utilitarianism, Feminism.

INTRODUCTION

"The end of law is not to abolish or restrain, but to preserve and enlarge freedom."[1]

The evolution of human beings has resulted in evolution of consciousness, as Carl Jung[2] once said human consciousness is always evolving. There is evolution in the individuality of human beings as well, people realized their inherit sense of equality and dignity- which led to enhancement of freedom and liberty among people. The birth of human rights resulted from the birth of that consciousness which makes people realize their inherit sense of dignity and equality. The inalienability factor of human rights, makes us believe that a human being gets such rights since birth- but I highly believe that such rights are subject to conscious realization of human beings inferring to the morality which has a very humanistic approach. When such universal consciousness inferring humanism developed, there was a need to protect human rights with law. There were many jurists and philosophers who led to intellectualize the very ideals of human rights, which eventually was codified and protected in the form of law.

KANTINIAN THEORY OF HUMAN DIGNITY

The very nature of human rights is inherent to the humanity and it has become a core part of the evolution of human civilization. The essence of human rights is based on two foundational metaphysical principles which are *dignity and equality*. The *Kantian theory of human dignity*[3] professes that humans possess dignity as they are rational agents who are capable of forming their own set of morality and can cultivate their own moral actions. Whereas, John Lock lays major emphasis on the very nature of equality in *the two treatises of the government*, Locke critiques that humans are naturally equal and governments are

[1] John Locke, *Second Treatise of Civil Government* (1690)
[2] Jung, Carl Gustav. 1997. *Man & His Symbols*. New York, NY: Bantam Doubleday Dell Publishing Group.
[3] Immanuel Kant, Groundwork of the Metaphysics of Morals (1785)

the protectors of such rights. The amalgamation of dualist metaphysics (dignity and equality) of human rights sets a tone which compels government to formulate laws in order to preserve and protect the rights which are inherent to humanity.

NATURAL LAW SCHOOL APPROACH

The Natural law school lays the very foundation of jurisprudence as a subject which later segmented itself away from the mainstream philosophy. According to natural law jurists the evolution of law resulted from reason, nature as well as divine insights which are inherent to the human consciousness, the inalienability factor of natural law school resembles with the principles of human rights law. John Lock emphasizes on three major rights dealing with life, liberty and property which are inherently there in a human being since his birth, therefore according to Locke these rights cannot be surrendered. Similarly, the human rights are inalienable and inherent. This somehow substantiates the point that human rights law has roots of its origin in the natural law school. The Universal declaration of human rights (herein UDHR) initiates with "All humans beings are born free and equal in dignity and rights" emphasizing autonomy and equality majorly with respect to dignity and rights. Principles like inalienability, universality as well as equality, which are derived from natural law school has impacted the very cores of UDHR formulation.

In the natural law school, law and morality are tightly amalgamated so to say that the origins of law are from the prevailing morality of the society. The very nature of morality originates from inherent dignity which human beings get by birth. As per Kant, the very dignity of a human determines the autonomy to decide their own moral actions, this autonomous freedom is itself an essence of human rights. The laws relating to such protect this inherent nature, by safeguarding the autonomy of every individual. But there are aspects at individual level which comes in conflict with the general will of society, herein the issues of human rights do not show resemblance with the same. As human rights issues are of universal character and they are inalienable in essence, hence aspects of UDHR show a uniform and universal strata. The idea of universal moral principles governs the laws relating to human rights.

SOCIAL CONTRACT THEORY

It is interesting if we corelate the social contract theory with the dimensions of human rights law. The very formulation and

evolution of societies has been discussed in depth by Hobbes, Locke and Rousseau. Among all three social contract jurists, the major point of difference is based in the aspects relating to the state of nature, this is due to the different sociological conditions which was observed by such jurists. The state of nature through the lens of Hobbes was nasty, brutal and short lived, which was a very pessimist state of circumstances then. Similarly, if we look at the lives of slaves it strikes exact resemblance to the Hobbes's state of nature. In the eyes of Locke, the state of nature lacks natural inherent rights devolving upon life, property and liberty. These aspects are still viewed as more optimistic than Hobbes's state of nature. Life, liberty and property are one of the key aspects of human rights law, in Article 3 of UDHR the life, liberty and security of persons are protected. Lastly, when we look at the state of nature emphasised by Rousseau wherein the development of property and social institutions led to corruption of society leading to loss of freedom and growth of inequality. Similar analogy can be applied to the prevailing issues of human rights wherein the concentration of property and power in the hands of few, has caused major abuse to the lower sections of society, eventually leading up to gross violation of human rights. Such abuse has caused the demeaning effects of inequality and loss of dignity. It forms an interesting et of observations when we correlatively look upon the aspects of Human rights in corollary with the social contract theory.

BENTHAM'S UTILITARIANSIM

Jeremy Bentham hedonistic approach to legal field led to utilitarian emphasis in law, the greatest happiness for great number of people illustrates the will of majority. This stands on the contrary to the interest of minority, the majority aspect may have a drastic effect on individuals, which will eventually enter into the domain of human rights. Stuart Mill sets his philosophical emphasis on the importance of individual liberty, he formulated the harm principle wherein the power can only be exercised onto when it is to prevent any harm to others- the very ground of action herein is of preventive nature, similarly when we look at the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) have that preventive essence which Mill emphasised upon.

MARXIST CRITIQUE

There is an old Marxist pun which goes like "*The last capitalist we hang shall be the one who sold us the rope*". Karl Marx had a significant impact on the society which was a result of capitalism.

Its major criticism targeted the concentration of wealth in the hands of few which led to the struggle of working class, as Marx always emphasized on the point that all human struggle is the economic class struggle. The very aspect of economic class struggle resulted in rich and poor divide. Marx voiced out the very issues of this divide by advocating on the behalf of economically weaker section of the society. Marxist concept of equality was more based on socio-economic divide whereas human rights aspect of equality defends the very inherit humanistic identity by emphasizing on equal policy implementation. If we observe Marxist approach herein, we see that Marx criticizes the very liberal rights like right to liberty, security and property as they establish the means to divide the rich-poor inequality, Marx also led to focus on the very point that these rights promote formal equality but ignores material inequality (herein material inequality means the class divide). Hence, we see the very approach of human rights which is very humanistic in nature identifying the very inherit genome of equality given by birth. Marxist approach differs here as it cites the very material division emphasized by socio-economic inequality. Here we can also observe that Marxist point of view is pragmatic in sense as socio-economic inequality is a major one which resolves many aspects of inequality in the realm of human rights, which eventually resolves the very dimensions formal inequality. We see socio-economic rights emphasized in UDHR between article 22 and 27 which give a socialist backing to the human rights law. The birth of socialist state was in response to the concentration of resources in the hands of powerful, eventually leading to inequality in society. Hence many of the states adopted the very socialist approach in their legal policy in order to counter the same.

RAWL'S VEIL OF IGNORANCE

Rawls veil of ignorance[4] which emphasized that all laws should be constructed behind the veil of ignorance, this veil hides the very social positions of the people so that the law makers are not influenced by any influences while drafting the same. The veil creates a leveling which automatically leads to promote the principle of equality in implementing the law. Rawls in the book the theory of justice emphasized the dual principles of justice. Firstly, there should be equality in liberties such as freedom of speech, political rights etc. Secondly, there should be fair equality of opportunity which focuses on the difference principle which

[4] Freeman, Samuel, "Original Position", *The Stanford Encyclopedia of Philosophy* (Winter 2023 Edition), Edward N. Zalta & Uri Nodelman (eds.), https://plato.stanford.edu/archives/win2023/entries/original-position

allows inequality are allowed only if they benefit the less advantage class of people. The application of human rights law should be uniform, and its effect should also be uniformly experienced by the people. That is what Rawls emphasizes when he cites the principle of veil of ignorance. Article 14 of the Indian Constitution discusses two kinds of equality, equality before law which promotes formal equality and equal protection of law which promotes substantive equality. Formal equality puts theoretical uniformity in a very principle-based approach where it emphasizes that every one is equal in the eyes of laws. Whereas, Substantive equality has more of a procedural outlook as it tries to satisfy the aspects of formal equality in a pragmatic tone, it grants equal protection of laws which is a positive concept which points out that state should treat individuals equally in a manner that is just and fair, which eventually ensures that laws apply equally in all circumstances. Article 1[5], promotes that all human beings are born equal and free with respect to dignity and rights. Article 7 [6]promotes the concept of equality before law as all are equal before the law and are entitled to equal protection of laws. Even in article 26[7] ensures the equality before law and prohibits discrimination. Hence, the quality principles are inherent in human rights jurisprudence as it is the most core element which nullifies the very aspect of discrimination.

THE FEMENIST CRITIQUE

The very idea of feminism initiated in response to the patriarchal struggle of the society. The major feminist approach argued that the initial human rights angle ignored the various concerns of women and was men centric. Various waves of feminism had different approaches to promote the narrative of gender equality. By the time as evolution of this ideology pedestaled to the upper stairs, the very idea of feminism became all gender inclusive. This led to an ideal where society which is all gender inclusive with no pinch of discrimination which in essence promotes the domains of equality and dignity with respect to human rights. But somehow, the ideals of human rights were too male centric, which needed to be changed- there were ideals of formal sense of equality but there was no substantive equality, hence there was a need to change the very approach of human rights and its attitude towards women. Each wave of feminism has escalated the growth of human rights, making it more gender inclusive. Equality with respect to gender is also emphasized under Universal Declaration of Human rights (UDHR). Gender equality is an essential criterion

[5] Universal Declaration of Human Rights (UDHR, 1948)
[6] Universal Declaration of Human Rights (UDHR, 1948)
[7] International Covenant on Civil and Political Rights (ICCPR, 1966)

in order to promote the very domains of

CONCLUSION

The jurisprudential aspects of human rights emerged from Carl Jung's theory of evolving human consciousness. This facet of Jungian psychology focuses on the analytical concept that consciousness has evolved over time, giving rise to human dignity and sense of equality. Human dignity and equality are the main drivers of freedom and liberty. Freedom and liberty being the key aspects of Human rights. Although these rights are universal and may be considered sacrosanct in legal context (eg. UDHR), they act as pillars to various societal and political ideologies. There are various jurisprudential perspectives on human rights, each offering a unique depth to the discussion. These perspectives range from Kant's emphasis on human dignity to Marxist and feminist viewpoints of Karl Marx and other modern age jurists. This suggests that Human rights are and will be discussed as an evolutionary concept. Human dignity, a link to the present-day concept of human rights came from Locke's Natural law roots. Additionally, this went on to being the metaphysical pillar of human rights in the late 1700s. Rawls' concept of the veil of ignorance, which underscores the need for unbiased laws. The same dogma which made the universal and national legislations (Article 14, Indian Constitution) for equal opportunities possible. All these theories have only contributed to conceptualizing a framework for the inherent human dignity, equality and autonomy. On a close jurisprudential analysis of the revolutionary trajectory of human rights, the key aspects that the thinkers have come to learn is that Human rights law is a dynamic framework shaped by centuries of balance among individual, social and political rights of the mankind. It also reveals that even with these historical shifts, it will remain a futuristic concept rooted in the mere idea of dignity, freedom and equality.