



The Transformation of Natural Rights to Human Rights to Fundamental Rights.

Name – Deepanshu Ashava

Designation – LLM Student (Corporate)

Institutions – United University, Allahabad

Address – 230 H.I.G Preetam Nagar Allahabad

Abstract.

It has become relevant to talk about human rights in this modern era where there is a lot of human rights violation. Human rights are the norms, which describe certain degree of human behavior or their nature, which are always protected as legal rights in the domestic & international laws. The basic idea of the human right developed aftermath the Second World War. The Constitution of India also makes provisions for the fundamental rights for its citizens and aliens. The true antecedent of human rights palaver was the notion of natural Rights that materialize as lump of the mediaeval Natural law. The main objective of this paper is to critically analysis how the evolution of the Rights from Natural Rights to Human Rights to Fundamental Rights in the world wide take place which help in developing the knowledge and provide awareness to the audiences. The author follows Doctrinal Research methodology and relying on secondary sources of information.

Keywords – Natural Rights, Human Rights, Fundamental Rights, UDHR, European Convention, Magna Carta.

According to Bhagwat Gita which is the song of the God, sung by the Lord Krishna in the field of Kurushetra, states that “he who has no ill will to any being and is friendly and compassionate, who is even-minded in pain and pleasure and patient is dear to God. The Godliness in humans is stand in for by the rectitude or the morality of non-violence, truth, as well as freedom from vexation, renunciation, aversion to fault detection, solicitude to living being, deliverance from covetousness, gentleness, modesty and steadiness – the qualities that a good human being ought to have.”

Natural Rights are those rights which are independent from the laws and custom of any particular culture or government, and, therefore, they applicable universally i.e. they can't be repealed by human-made laws, though one can forfeit their enjoyment through one's action such as by violating someone else's rights). Natural law is the legislation of Natural Rights.¹

Natural law or the natural rights first appeared in the ancient Greek philosophy, and was referred to by Roman philosopher Cicero. It was subsequently alluded to in the Bible, and then developed in the Middle Ages by catholic philosopher such as Albert the Great and his pupil Thomas Aquinas. During the age of Enlightenment the concept of natural law/rights was used to challenge the divine right of kings, and became an alternative

¹ Interrelationship between human rights and natural law. (18th September 2017), ukessays.com URL = https://www.ukessays.com/essays/human-rights/interrelationship-human-rights-natural-3661.php#_ftn65

justification for the establishment of a social contract, positive law, together with the government – & consequently legal rights in the shape of classical republicanism.²

In the inception, the right of man as a licit or moral idea appeared in the structure of natural Rights. The natural rights were procured from the nature of human being or their behavior, and, therefore are inherent in the nature of man and forms part of his intrinsic nature. It can be summed up that there exist in the nature certain moral principles which can be recognized by the man by application of his reason and self-determination.

Those rejecting the difference between human rights and natural rights view those human rights as the successor and therefore, human right is not dependent on the natural law, natural theology or Christian theological doctrine.³ Natural rights, in isolated, are contemplate far off the authority of any government or international body to set aside. The 1948 United Nations Universal Declaration of Human Rights is an important legal instrument enshrining one Concept of Natural Rights into international soft law.⁴ The idea of human rights derives from the theories of natural Rights.

The concept of human rights is as old as the ancient doctrine of ‘Natural Right’ founded on natural law, the expression ‘Human Rights’ is of recent origin, emerging from (post-second world war) international charter and convention. It would, consequently, be logical to begin with the idea of natural rights that eventually led to the development of human rights.⁵

According to section-2(d) of Protection of Human Rights Act 1993 which was enacted by the Indian Government, defines human rights as – “the Rights relating to life, liberty, equality and nobility of the individual swear by the Grundnorm or embodied in the International Covenant together with the accomplish by Court in India.

The idea that human beings should have a set of basic rights and freedom has deep roots in Britain landmark developments and it includes:-

- **The Magna Carta of 1215**—it was a treaty to maintain peace between the King and the rebel barons which were the main basis of violation on peace in that time period. This was a major failure on the aspect of peace but provided for a framework for relationship between the king and his subject. Initially it contained 63 clauses when it was first issued, but as of now only three of these 63 clauses remains in force and are part of the English Law. First clause safeguard the rights together with the liberties of the Church, second clause safeguard the customs of London together with the other towns & the third being the famous states that: “No free man should be snatch or lock up, or stripped of his rights or possessions, or embargo or exiled, or impoverished of his standing in any different circumstances, neither will we begin with coercion against him, or dispatch others to do so, omitting by the lawful president of his equals or by the law of the land. To nobody would we sell, to nobody refuse or retard right or justice.”
- **The Habeas Corpus act of 1679**—it was enacted by the Parliament of England in the year 1679 during the reign of King Charles II. This Act strengthened the judiciary to use the writ of habeas corpus, which was required to look whether the detention of the prisoner was unlawful and arbitrary or not. This Act gave the prisoners to challenge their detention for a judicial review except in cases of treason and felonies.
- **The Bill of Rights of 1689**—It was a landmark Act in the history of England and sets out certain basic civil rights to the individuals of the country. The Bill lays down limit on the monarch and also defines the right of parliament. For individuals also it sets out certain rights inter alia prohibition of cruel punishment, no right to taxation without the approval of the parliament etc.

² Jones, Peter. Rights, Palgrave Macmillan, 1994, p. 72

³ Jones, Peter. Rights, Palgrave Macmillan, 1994, p.81.

⁴ James Nickel, Human Rights, 2010.

⁵ Ansh Arora, Interpretation of Human Rights in India. Legal Services.com, URL = <http://www.legalservicesindia.com/legal/article-1200-interpretation-of-human-rights-in-india.html>

The consequence of the Second World War (1939-1945) had given rise to the serious worry towards humanity because humanity suffered lot in this era including death and further crimes, and as an outcome tremendous developments have been made in the field of human rights. Subsequently large number of international human rights instruments and covenants came into existence;-

- The U.N Charter 1945.
- Universal Declaration of Human Rights, 1948.
- International Covenant of 1966 that is - Civil & Political Rights and Economic, Social & Cultural Rights.
- European Convention for Protection of Human Rights, 1953.

The United Nation was founded in 1945 and allowed more than 50 members state to contribute to the Universal Declaration of Human Rights adopted in 1948. This was the first attempt to set out at a global level the fundamental rights are freedoms shared by all human beings. The Universal Declaration of Human Rights setup the cardinal for the European Convention on Human Rights take on in 1950. The Human Rights Act 1998 construct the rights set out by the European Convention on Human Rights are the fragment of our domestic law. These cardinal rights are erect on split values such as – dignity, fairness, equality, respect as well as independence.⁶

The notion of Rights is central to our moral lexicon. Over the centuries, however, the concept of rights has evolved significantly the original faculties-based natural rights doctrine is being replaced by a needs-based and dependency based human rights doctrine. This change is best represented in the sharp contrast between rights claimed expressed in the Declaration of Independence and the United Nations Declaration of Human Rights. This movement in the theory has and will continue to have broad and practical consequences. The human right view in understanding human beings as needy and dependent rather than as distinctively capable of responsible liberty, leads to the endless proliferation of rights claims, which became self-negating. Where every individual has the right to everything, there can be no justice. If the idea that we possess right by virtue of our rational nature is to remain viable as the core of our understanding of justice the identification of those rights must be grounded in a defeasible account of our morally distinctive nature and subject to a sound limiting principle.⁷

Our country was one of the original Signatories to the international Covenant on Civil and Political Rights and therefore the framers of the Indian Constitution were influenced by the Concept of Human Rights and recognized as well as guaranteed most of the Human Rights which were subsequently embodied in the International Covenant 1966.

The Constitution of the Republic of the India which came into force on 26th January 1950 with 395 Articles and 8 schedules is one of the most elaborate fundamental laws ever adopted. The Preamble of the Constitution clearly states that India to be a Sovereign, Socialist, Secular and Democratic Republic. The term democratic denotes that Government gets its authority from the will of the people. The Constitution of India gives an emotion that all individuals are equal irrespective of the race, religion, language, sex and culture.

The Preamble to the Constitution pledges justice, social, economic and political, liberty of thoughts, expression, belief faith and worship equality of status and of opportunity and fraternity assuring the dignity of the solitary and the unity and integrity of the nation to aid its citizens.

Fundamental Rights are the rights together with freedoms pledge by Constitutions of different natos of the world to their residents. These rights have a legal sanction and can be challenged by affected individual in a court of law.

⁶ What are human rights? Equality human rights.com, URL = <https://www.equalityhumanrights.com/en/human-rights/what-are-human-rights>.

⁷ Peter C. Myers, from Natural Rights to Human Rights-And Beyond, heritage.org (December 20, 2017) URL = <https://www.heritage.org/progressivism/report/natural-roghs-human-rights-and-beyond>

India was a signatory to the Universal Declaration of Human Rights (UDHR) A number of fundamental rights guaranteed to the individual in Part-III of the Indian Constitution are similar to the Articles of Universal Declaration of Human Rights

Articles	UDHR	Constitution
Equality before law.	Article-7	Article-14
Prohibition of a discrimination.	Article-7	Article-15(1)
Equality of opportunity.	Article-21(2)	Article-16(1)
Freedom of speech and expression.	Article-19	Article-19(1)(a)
Freedom of peaceful assembly.	Article-20(1)	Article-19(1)(b)
Freedom to form association or union.	Article-23(4)	Article-19(1)(c)
Freedom of movement within border.	Article-13(1)	Article-19(1)(d)
Protection respect of conviction for offences.	Article-11(2)	Article-20
Protection of life and personal liberty.	Article-3	Article-21
Protection of slavery and forced labor.	Article-4	Article-23
Freedom of conscience and religion.	Article-18	Article-25(1)
Remedy for enforcement of rights.	Article-8	Article-32
Right against arbitrary arrest and detention.	Article-9	Article-22
Right to work to just and favorable conditions of work.	Article-23(1)	Article-41
Right to equal pay for equal work.	Article-23(2)	Article-39(d)
Right to education.	Article-26(1)	Article-21(a), 41, 45, 51(A)(k)
Right to just and favorable remuneration.	Article-23(3)	Article-43
Right to rest and leisure	Article-24	Article-43
Right of every one to a standard of living adequate for him and family	Article-25(1)	Article-39(a), 47
Right to proper Social order.	Article-28	Article-38

This shows that most of the economic, Social and cultural rights proclaimed in the Universal Declaration of Human Rights has been incorporated in part III and IV of the Indian Constitution.

The aftermath of the Universal Declaration of Human Rights (UDHR) on preparing part-III of the Indian Constitution is evident. India has acceded to the Universal Declaration of Human Rights as well as to the subsequent International Covenant of Economic, Social and cultural rights and Civil & Political Rights embrace by the central assembly of the United Nations.

Fundamental rights cherish in Part-III of the Indian Constitution have come out from the doctrine of Natural Rights. Natural rights are the traditional name of the fundamental rights. The Natural Rights transformed in to fundamental rights operate as a Constitutional limitation or a restriction on the powers of the organs set up by the constitution or the state action. Judicial Review, justifiability or enforcement become an inseparable concomitant of fundamental right. As no right of freedom could be complete restriction have been obtrude to each

fundamental right in the absorption of acquiring Social justice. Enforcement of fundamental rights can even be suspended or prevented in the emergency.⁸

The judicially enforceable fundamental rights which encompass all seminal civil and political rights and some of the rights of minorities are enshrined in Part-III of the Constitution (article 12 to 35). These includes the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to Constitutional remedies. Fundamental rights which are enshrined in the Part III of the Constitution differ from ordinary rights in the sense that the former are inviolable. No law, ordinance, custom, usage, or administrative order can abridge or take them away. Any law, that is contravene of any of the fundamental rights, is invalid .

In **Keshavanda Bharati vs State of Kerala**⁹ – in this land mark case the Supreme Court remark that the Universal Declaration of Human Rights might not be a legally obligatory apparatus but it manifest how India acknowledge the essence of human rights meanwhile the Constitution was embrace. Further, the Apex Court recognizes these fundamental Rights as a Natural Rights or Human Rights. While mentioning the Fundamental Rights restrained in Part - 3rd of the Grundnorm (Constitution). Sikri the Chief Justice of India remark that, I am powerless to hold these provisions to manifest that rights are not natural or unchallengeable rights. As a down-to-earth India was a member to the Universal Declaration of Human Rights and that Declaration relates some fundamental rights as unchallengeable.

In **Jolly George Varghese vs Bank of Cochin**¹⁰ – this case was about the point involved was if a right assimilate in the Covenant on Civil and Political Rights, which is not concede in the Indian Constitution shall be available to the individual in India. Justice Krishna Iyer recapitulate dualism and contended that the positive commitment of the State Parties catches legislative activities at home however does not instinctively make the covenant an de jure part of the Corpus Juris in India. Thus, although the Supreme Court has stated that the universal Declaration can not created a binding set of rules and that even international treaties may at best inform judicial institution and inspire legislative action.

In **ADM Jabalpur vs Shivkant Shukla**¹¹ – In this case Justice Beg observed that the object of making certain general aspects of rights fundamental is to guarantee them against illegal incursion of these rights by executive legislative or judicial organ of the nation.

In **Golak Nath vs State of Panjab**¹² – In this case Chief Justice Subha Rao in this case had rightly observed, Fundamental Rights are the modern name for what have been traditionally known as Natural Rights.

In **Chairman, Railway Board and others vs Mrs. Chandrika Das**¹³ – In this case the Supreme Court observed that the declaration has the international recognition as the Moral Code of Conduct having been adopted by the General Assembly of the United Nations. The relevancy of the Universal Declaration of Human Rights (UDHR) together with principles aforesaid might have to be read, while need be, into the internal jurisprudence.

In **State of West Bengal vs Subodh Gopal Bose**¹⁴ – In this case the Chief Justice Patanjali Shastri referred to fundamental rights as those great and basic rights which are acknowledge and undertake as the natural right intrinsic in the status of a citizen of a free country.

⁸ Md. Sahabuddin Mondal, Are human rights eligible to be Regarded as basic Rights or natural rights, legal service India.com, URL = <http://www.legalservices.india.com/article/2314/Are-Human-Rights-Eligible-To-BeRegarded-As-Basic-Right-Or-Natural-Rights.html>

⁹ AIR 1973, SC 1461

¹⁰ 1980 AIR 470, 1980 SCR (2) 913

¹¹ 1976 AIR 1207, 1976 SCR 172

¹² 1967 AIR 1643, 1976 SCR (2) 762

¹³ 28 January 2000

¹⁴ 1954 AIR 92, 1954 SCR 587

Research Objectives.

This manuscript highlights the possible areas of academic research that are likely to be analysis the dynamic nature of the Transformation of Natural Rights to Human Rights to Fundamental Rights. The main objective of this paper is to critically analysis how the evolution of the Rights from Natural Rights to Human Rights to Fundamental Rights in the world wide take place. It may help in developing the knowledge and provide awareness to the audiences like – Students, Professors, Research Scholars and other individuals etc.

Research Methodology.

The Author follows the Doctrinal Research Methodology. This research will rely absolutely on secondary data sources and would not comprises a primary data collection ingredients. 12 indicators have been selected 9 from different data sets, which will be analyzes during the starting week of January 2023 for information which the secondary data sources collected their data. We collected data using an online research platform (Google, YouTube, News app, Journals, blogs, articles, social media etc.) As per the Indian Government recommendation to minimizes face to face or physical contacts as citizens carry on with to isolate themselves at home. The current study investigated the evolution of the Rights from Natural Rights to Human Rights to Fundamental Rights in the world wide take place.

Conclusion

In conclusion, while we have seen a progressive inclusion in human rights into Constitution since the 18th century, the upholding of these rights has hardly been a success. The aftermath of the Second World War, which saw the infringement of human rights on a gigantic scale, and the upswing in totalitarianism, has turn down a growth in interest towards establishing the security of such right. In map out what rights must be comprised in several Conventions there have be. In the second half of the 20th century, the widening of interest in human rights has been go along with by a revival of natural law. International human rights law lays down obligation on government to act in certain ways or to refrain from certain act, in order to promote and protect human rights and fundamental freedoms of individual or group. Constitution acts as a protector of these basic rights as fundamental rights and DPSPs. More significance has been given to the fundamental rights and they are directly justiciable in the court of law. From the deep study of Part-III and Part-IV of the Indian Constitution it is easily evident that almost all of the rights provided in UDHR are covered in these two parts. It is a ordinary presumption that a natural rights theory of human rights underlies contemporary human rights doctrines.