

1.3 Theories of Human Rights

In order to have a comprehensive understanding of human rights, a look at the various theories becomes necessary to observe the shifting of priority of rights during the different phases of history. These theories provide the basis to determine the precise subject matter upon which there could be an agreement. An incisive insight into the major theories of rights is as follows: -

1. The Theory of Natural Rights

This is the earliest theory of rights. Its origin can be traced back to the ancient Greeks. According to this theory, rights belong to the man by nature and thus are self-evident truths. They are considered as inborn absolute, pre-civil and pre-social. They can be asserted anywhere and everywhere. Thomas Paine, Grotius, Tom Paine and John Locke, to name a few, are the main exponents of this theory. These theorists derived their ideas about rights from God, reason or a prior moral assumption. To them, every individual possesses a unique identity and is expected to account his actions as per his own conscience.

However, the critics of the natural rights theory argue that rights are not abstract, absolute, or unidentified phenomenon. Liberty, as they argue, lives within restraints. So, restraints upon rights create social conditions where everyone has a share to develop his personality and correspondingly has his obligations to others. Rights and obligations, in fact, are the two sides of the same coin. Despite the above shortcomings, the theory of natural rights inspired the idea that any kind of unjust, arbitrary or oppressive treatment to human beings is an assault upon humanity itself. Apart from this, it also provided the basis, for the English, French and American revolutions, thereby resulting in the Bill of Rights.

2. The Legal Theory of Rights

This theory is a reaction against the theory of natural rights. Advocates of this theory argue that the ideas of natural law and natural rights are abstract

and ridiculous phenomenon. Hence, the existence and enjoyment of fundamental rights of an individual could be better maintained and practiced by the state rather than by the individual himself. Thomas Hobbes, John Austin and Jeremy Bentham are the main propounded of this theory. According to them, rights are purely utilitarian concepts and thus the rule and regulations are necessary for identification and protection of one's rights. Towards this end, every individual has to sacrifice certain rights and freedoms for the general welfare of the society.

This theory has been severely criticized on the ground that law alone does not create rights. Rather, it recognizes and protects them. Customs, traditions and morality also have a basis for rights. However, the truth in this theory lies in the fact that it enables individuals to demand certain specific and recognized rights as granted and guaranteed by the state.

3. The Anti-utilitarian Theory of Rights

There are yet other theorists who strongly argue that priority of well-being of majority as stated by the utilitarian is not prime objective of state. Amongst them Dworkin, Nozic and John Rawls are the leading ones. They hold the view that welfare of majority might lead to detrimental consequences as far as welfare of a particular person or a group of persons is concerned. So there has to be proper reconciliation between the well being of the majority and individual well-being for the better enjoyment of social and individual rights. Today, the demand for right to development on international foray is perhaps the manifestation of this theory.

4. The Legal Realist Theory of Rights

The Legal Realist Theory of Rights is of recent origin. It mainly originated in U.S.A. with the expansion of regulatory activities followed by President Roosevelt's "New Deal Policy." A group of jurists such as Karl Llewellyn, Roscoe Pound and others discussed the point as to what law does, rather than what law is, in a highly complex and industrialized society. These theorists did not propound a common theory of rights. Rather, they considered rights as the end product of both the interaction of prevailing moral values of the society as well as broad-based international sharing of

values. So human rights, as they argue, are nothing but a manifestation of an on-going process rather than a theoretical debate. This kind of a new approach to the concept of rights goes away with problems relating to abstract nature of concept.

However, this theory goes about questioning the existing laws, their values and actions, so far enacted upon society. In other words, it questions the shortcomings and ineffectiveness of the existing laws but does not prescribe any solution in the form of super-value of a human being.

Notions of Human Rights

The notion of human rights is the most important one. It has gained global acknowledgement in the contemporary society. It is the most precious legacy of classical and contemporary human thought and has sought the attention of the people worldwide. While there is an increasingly widespread concern for universal respect and observance of human rights, gross violation of norms continue unabated in almost all parts of the world. Human dignity as the essence of the notion of human rights remains unchanged. It will continue to be so as long as people suffer from disease, hunger, lack of opportunities and denial of the most basic economic, social, political and civil rights. Thus, the challenge of violation of human rights faces the mankind in its stark nakedness. The challenge is global and embraces the whole mankind.