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**ENFORCEMENT OF HUMAN RIGHTS : ASIAN AND AFRICAN PROSPECTIVE**

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**ABSTRACT**

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights, being the birth right, are, therefore, inherent in all the individuals irrespective of their caste, creed, religion sex and nationality. These rights are essential for all individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary to provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings; human rights are also sometimes referred to as fundamental rights, basic rights inherent rights, natural right and birth rights.

Human rights are being essential for all round development of the personality of the individuals in the society, be necessarily protected and be made available to all individuals. They must be preserved, cherished and defended if peace and prosperity are to be achieved. It has been realised that the functions of all the laws whether they are the rules of municipal laws or that of international law should be to protect them in the interest of the humanity.

Presently there is a widespread acceptance of the importance of Human rights in the international structure because it has legal, moral and political bearing. Human rights are legal because it involves the implementation of right and obligations mentioned in international treaties. It is moral because human rights are a value-based system to preserve human dignity and it is political in the larger sense of the word. They also operate to limit the power of government over individuals. However, one will not hesitate to admit that there is a confusion prevailing as to its precise nature and scope and the mode of international law as to the protection of these rights.

**Keyword:** Inalienable, Existence, conducive, structure, hesitate, confusion, prevailing, influenced, Sovereignty, contemporary, Preamble, interdependent, auspices, obligations, Assistant Professor. Faculty of Law, University of Lucknow, Lucknow

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divergent, revealed, Immutable, dignified, conscious, apartheid, rapporteurs, fostered exhaust, exploit

### INTRODUCTION

International law was concerned with states in the classical period which was influenced by the theory of state sovereignty. The view was based on the thesis that only states create rules of international law, and as such, rules are valid for them alone. Thus, no place left for the individuals, and therefore, they had no legal significance from the international law point of view. Individual were related to one state through the bond of citizenship or nationality, and this stood in relation to other in the role of aliens. If an injury was called to an individual, it was a state (to which the individual belonged) alone which hold the responsibility under international law to another state.

The transformation of the position of the individual after the second world war has been one of the most remarkable developments in contemporary international law. The character of the United Nation of using the word '*people of the United Nations*' in the preamble has given place of importance to individuals. However, this alone did not change the position of individuals in the domain of international law. They are regarded as the real subjects and beneficiaries of international law by virtue of having right and duties flowing directly from international law. *For instance*, national of the Allied and Associated powers were empowered to bring cases against Germany before the Mixed Arbitral Tribunal in their own name for compensation in accordance with Article 304(b) of the Treaty of Versailles lease of 1991. Further, Treaty of 1907 five Central American States establishing Central American Court of Justice provided for individuals to bring directly before the court.

Human rights is one of such rights which has been conferred to introduce by the stage in the modern international law.

### MEANINGS:

Human beings are rational beings. They by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. Since these rights belong to them because of their very existence, they become operative with their birth. Human rights, being the birth right, are, therefore, inherent in all the individuals irrespective of their caste, creed, religion sex and nationality. These rights are essential for all individuals as they are consonant with their freedom and dignity and are conducive to physical, moral, social

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#### **KINDS OF HUMAN RIGHTS:**

Human rights are indivisible and interdependent, and therefore precisely there cannot be different kinds of human rights. All human rights are equal in importance and are inherent in all human beings. The universal declaration of Human rights therefore did not categorise the different kinds of human rights. It simply enumerated them in different articles. However, the subsequent development made in human rights field under the United Nations system make it clear that human rights are the two kinds (1) civil and political rights, and (2) economic, social and cultural rights.

#### **CIVIL AND POLITICAL RIGHTS:**

Civil rights for liberties are referred to those rights which are related to the protection of the rights to life and personal liability. They are essential for a person so that we may live a dignified life. Such rights include rights to life, liberty and security of person, right to privacy, home and correspondence, rights to own property freedom from torture, in human

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and degrading treatment, freedom of thoughts, conscience and religion and freedom of movement.

Political rights may be referred to do rights with allow a person to participate in the government of a state. Thus, rights to vote, right to be elected at genuine periodic elections, right to take part in the conduct of public affairs, directly or through chosen representatives are instances of political rights.

### **ECONOMIC SOCIAL AND CULTURAL RIGHTS:**

Economic social and cultural rights (so called 'freedom to') Are related to the guarantee of minimum necessity of the life in human beings. Right to adequate food, clothing, housing and adequate standard of living and freedom from hunger, right to work, right to social security, right to physical and mental health and right to education are included in this category of rights. These rights are included in international covenant on economic, social and cultural rights.

These rights (sometimes called positive rights) require active intervention not abstention on the part of states. These rights are therefore counterpart to the first generation of civil and political rights, with human right conceived more in positive (right to) then negative (freedom from) terms.

Economic, social and cultural rights are based fundamentally on the concept of social equality.

In addition to the above right there is another kind of rights which may be enjoyed by individuals collectively such as right to developments, right to a protected environment, right to self-determination or the physical protection of the group as such through the prohibition of genocide.

### **SOURCES OF INTERNATIONAL HUMAN RIGHTS LAW:**

International human rights law derive from the variety of sources which are as follows-

- 1) INTERNATIONAL TREATIES - treaties are the most important sources of international human rights law. Presently, a number of multilateral treaties relating to human rights in forces which are legally binding to those states which are parties to them. The most important amongst them is the United Nations Charter itself which is

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binding on all the states in the world and establishes at least general of the patients to respect and promote human rights.

- 2) INTERNATIONAL CUSTOM - certain International human life have acquired the status of customary international law by their widespread practice by states and they have specially constructed.
- 3) OTHER INTERNATIONAL INSTRUMENTS - a great number of international declarations resolution and recommendations relating to human rights have been adopted under the auspices of the United Nations which have established broadly recognised standard in connection with human rights issues despite the fact that they are not legally binding on the states.
- 4) JUDICIAL DECISIONS - decisions of the various judicial bodies are relevant in the determination of the rules on human rights issues. Although action by the International Court of Justice in the area has been limited, there is no doubt that cases could fall within its competency. In addition to the judicial decisions, opinions of the arbitral bodies whose function is to mandate on complaints of human rights violations under various treaties also expressed in the determination of the rules relevant to International human rights.
- 5) OFFICIAL DOCUMENTATION - Official document of the United Nations and its subsidiary bodies have produced a vast amount of documentation relating to human rights matters. Human rights law journal, human rights and European law review and the collective work done under the auspices of the international bodies are of considerable work done under the auspices of the international bodies are of considerable value.

However, the inspiration of these obligations live in 'morality, justice, ethics' or a simple regard for the dignity of mankind.

#### **BASIS OF HUMAN RIGHTS:**

Views of the jurists on the question as to bases of human rights are divergent which have led to the emergence of different theories. Prominent among them are as follows :-

- 1) NATURAL LAW THEORY - ancient thinkers and philosophers were of the view that human rights has been derived from the principle of eternal law as revealed in natural law which is also sometimes called divine law moral law. The source of natural law is

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either god or reasons. The Greeks regarded natural law as being closely related both to justice and ethics.

Natural law theory was first practiced by Romans in the formation of body of legal rules for the administration of justice. The Roman view was that natural law is the immutable and universal part of their texts.

The theory of natural rights clearly derives from natural law. Natural right is an interest recognised and protected by a rule of natural justice. It was a body of principles superior to positive law. They arose from the very nature of man.

- 2) SOCIAL UTILITY THEORY - another theory which has been advocated as to the basis of Human Rights is the social utility. The theory maintains that what conforms to the utility (or the interests) of an individual represents the total sum of his happiness and that what conforms to the utility (or the interests) of a community represents the total sum of happiness of the individuals composing that community. Under the social utility theory of human rights, those rights are considered genuine human rights which tend to increase the total happiness of human beings. Thus, human rights are those which constitute permanent and general conditions of human happiness.

It is to be noted that the basis of human rights lies in the fact that an individual is a human being. Well-being and freedom in all aspects important aspects of the individual's existence because he is a rational being. These aspects are essential to an individual to live his life in a dignified manner and also because they bring happiness to him. Consequently, happiness and freedom constitute the foundation for human rights.

### **PROMOTION AND PROTECTION OF HUMAN RIGHTS BY THE UNITED NATIONS :-**

The term 'promotion of human rights' may mean setting of international standard of human rights, education and dissemination.

The term 'protection of human rights' which may mean implementation and enforcement action does not find in the U.N. Charter. Among the United Nations agencies only the Security Council and the International Court of Justice can engage in enforcement action; only they have a competence to pass a binding resolution or issue binding judgement. It is considered to generate political pressure on the target and thus an effort at protection, and not

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just promotion. The United Nations in the past has been able to promote and protect human rights by a number of bases which are as follows:

1) HUMAN RIGHTS CONSCIOUSNESS :-

The first and the most important role which the United Nations has played is that it has made the people and the state conscious about the human rights and fundamental freedoms. It has set a pace in establishing minimum standards of acceptable behaviour by states. The proclamation of the Universal Declaration of Human Rights containing the universal code of Human Rights may be regarded as the first step towards the promotion and protection of human rights.

2) CODIFICATION OF THE LAW OF HUMAN RIGHTS :-

The United Nations has codified the different rights and freedoms by making treaties for all sections of the people such as women, child, migrant workers, refugees and stateless persons. In addition to the above, the prohibition on the commission of inhuman acts such as genocide, apartheid, racial discrimination and torture have been brought within the international rule of law.

3) MONITORING OF HUMAN RIGHTS :-

Treaty bodies, special rapporteurs and working groups of the commission on human rights have procedure and mechanism to monitor compliance with conventions and investigations allegations of human rights abuses.

4) PROCEDURE FOR INDIVIDUAL'S COMPLAINTS:-

A number of Human Rights treaties permit individuals to make petition before the appropriate International bodies.

5) COMPILATION OF INFORMATION'S ON THE VIOLATIONS OF HUMAN RIGHTS:-

The original mandate of the commission on human rights is to examine situations where massive violation of rights appear to be taking place has been complemented by a new function i.e. compiling information on the incident of certain kinds of violations, or violation in a specific country.

6) EXAMINATION OF HUMAN RIGHTS SITUATIONS :-

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The Commission on human rights may ask the secretary-general to intervene or send an expert to examine a human rights situation in any state with a view to prevent flagrant violations.

7) COORDINATION OF HUMAN RIGHTS ACTIVITIES :-

The post of high commissioner of human rights was created in 1993 with the intention of strengthening the coordination and impacts of UN human rights activities.

8) BY PROVIDING ADVISORY SERVICES :-

The centre for human rights provides advisory services to governments seeking to improve their human rights performance.

### IMPLEMENTATION AND MONITORING OF HUMAN RIGHTS

There cannot be an international protection of human rights unless there is strong and effective machinery for its implementation is the key making the system of international protection of Human Rights effective. But the protection of Human Rights in international level is a difficult problem because of a variety of reasons. *Firstly*, the International Court of Justice is open states only. *Secondly*, the jurisdiction of the International Court of Justice depends upon the consent of the states involved, and this has been done by few states to disputes involving human rights. *Thirdly*, even if the International Court in a few cases is able to render judgement against the state, which violates human rights, there is no International police to enforce the decisions of the court. *Fourthly*, although International Law of Human Rights has fostered a growing political and legal support for the protection of human rights, many states still regards that enforcement of human rights is an interventionist act.

A number of committees, working groups and special rapporteurs have been set up to monitor the violation of human rights. Monitoring mechanism may broadly be divided into two categories which are as follows :-

1. CONVENTIONAL MECHANISM :-

There are at least seven core human rights treaties which have set up committees to perform the task the task of monitoring state's parties compliance with their obligations which are as follows :-

- 1) Human Rights committee (HRC) by the International covenant on civil and political rights (ICCPR).

- 2) Committee on economics social and cultural rights (CESCR) by the International covenant on economic, social and cultural rights (ICESCR).
- 3) Committee on elimination of discrimination against women (CEDAW) by the convention on the elimination of all forms of discrimination against women.
- 4) Committee against torture (CAT) by the convention against torture and other cruel, inhuman and degrading treatment or punishment.
- 5) Committee on rights of the child (CRC) by the convention on the rights of the child.
- 6) Committee on the racial discrimination (CRD) by the convention on the elimination of all forms of racial discrimination.
- 7) Committee on the right of migrant workers and members of their families (CMW) by the convention on the protection of the rights of all migrant workers and members of their families.

The above committees monitor the state's obligations through a dialogue with the representatives of each of the state's parties on the basis of a detailed report.

## 2. EXTRA CONVENTIONAL MECHANISM :-

In addition to treaty mechanism the most important procedures designed to protect human rights have been established within the United Nations commission on human rights and its sub-commission on the protection of human rights.

### **The African System of Human Rights :-**

The African System recognises an inter-state complaint mechanism. Under the Banjul Charter, the inter-state complaint mechanism is a mandatory procedure. Once a state becomes a state party to the Banjul Charter, it is bound by the inter-state complaint mechanism. The Banjul Charter provides two different ways of making an inter-state application. The first way gives a state the option of directly communicating with the state alleged to have violated rights before going to the African Commission with the complaint. Under this system, a state has at three-month period during which it must to seek a diplomatic solution to the problem. The second option is that the state can bring the case directly to the African Commission without the need to exhaust the first option. Article 49 provides that our state may make an inter-state complaint directly to the Commission.

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Once a member state decides to bring an inter-state complaint against another Member state, rules being to apply and the states must meet certain criteria. Once such condition relates to the exhaustion of diplomatic remedies. However, exhaustion of diplomatic remedies does not apply in cases that involved a vast violation of human rights.

The African system has not exploited this mechanism. Only a few inter-state complaints have, thus far, been made in the life of the Banjul Charter. One is the complaint filed by Sudan against Ethiopia on 1977 alleging that Ethiopia violated human rights of the local residents of Kurmmuk and Gissan cities bordering on Ethiopia. Sudan alleged that the Ethiopian Army invaded these cities and engaged in continuous violations of rights of the residents of these cities. This inter-state complaint did not succeed because Ethiopia was not a state party to the Banjul Charter at the time of the complaint.

Another inter-state complaint filed was the one Libya made against the United States following the U.S. bombing of Libya. The complaint was inadmissible because the United States was not a member to the Banjul Charter.

The third inter-state complaint is the one that the Democratic Republic of Congo made against Burundi, Rwanda and Uganda. It seems to be the one complaint filed properly since all parties to the complaint were state parties to the Banjul Charter.

Given the widespread violation of rights and abuse of power in the region, the inter-state complaint mechanism should be used more frequently. One writer ascribes hesitance by the African states to use the inter-state complaint mechanism to their highly protective attitudes toward their very recently gained sovereignty.

#### **South Asia- Human Rights Challenges and Prospect :-**

Hosting over one-fourth of the world population, South Asia is home to some of the world's most ancient civilizations, cultures and religions and languages. Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka are bound by historical ties with vivid exchanges among its peoples. However, in modern times the South Asian region has been reduced to one of the least integrated with low levels of cooperation and mutual assistance. Despite great strides in economic progress, the region continues to grapple with grave human rights violations. Poverty, terrorism, extremism, corruption and deficiencies in democratic institutions are a serious setback for the region. Women, children and minorities continue to be marginalized and require greater standard

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of protection. However, in the face of daunting challenges encountered by the States in the region there have been several positive developments. With relations among South Asian States improving over the last decades, it is time for this region of democracies to become a leader in regional Human Rights protection.

### **SAARC:-**

Established in 1985, the South Asian Association for Regional Cooperation (SAARC) sought to promote peace and stability in the region through strict adherence to the principles laid out in the Charter of United Nations and Non-Aligned Movement.

Given in the UN charter has been the basis for evolution of several instruments on human rights, SAARC has also taken some important step in the right direction.

Key instruments and initiative of SAARC include:

- Convention on Preventing and Combating Trafficking in Women and children for Prostitution, 2002
- Convention on the promotion of Child Welfare in South Asia 2002
- Social Charter 2004
- Charter of Democracy 2011
- Initiatives relating to climate change health food security mutual assistance on criminal matters combating and drugs.

The SAARC Social Charter has particularly reiterated the need for states in the region to promote universal respect for and observance and protection of human rights and fundamental freedoms for all. South Asian States have also explicitly reaffirmed their commitment to human rights in the outcome documents of the annual SAARC Summits, including the latest Addu Declaration, 2011. Similarly, the Thimpu Declaration, adopted in 2013 by SAARC Law, a Regional Apex Body of SAARC, accorded official recognition to human rights as the core component of democracy and good governance and as a necessary ingredient for social and economic development and for fostering peace and progress in the region.

### **A South Asian Human Rights Mechanism can help :-**

- In the greater realisation of Human Rights in the region;

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- Bridge the gap between domestic and international protection and promotion of human rights;
  - Provide an additional layer of enforceability for human rights;
  - Evolve a coherent understanding throughout the region and ensure enjoyment of internationally guaranteed human rights for all;
  - States address Human Rights issues at the regional level;
  - Address specific issues and challenges faced by the region, providing workable solutions and;
  - Promote greater peace and stability to the region through ensuring Human Rights office peoples.

### **CONCLUSION :-**

So, in my opinion human rights are trying to be get implemented by various means through various conventions in so many countries write India, Nepal, Bangladesh etc.

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