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Law and Human Rights – A Cardinal Parallel Relation

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Abstract

In today's world, people are becoming self-centred and selfish and these kind of people are always very decisive as to what they wish; they do not waste their energy in considering the good of others and that is the reason there is a need of 'law' so that because of their selfish nature people don't harm others around them. Law is a codified set of rules and regulations that stop a person from infringing a right of any other person. Rules and regulations are very important part of any society. Rights are empty words in the absence of a legal and political order in which they can be realized. Also, rules are the factor that brings in discipline and discipline is the factor that is important for the growth of any person as well as society. The paper helps in building the understanding of Law and Human Rights. This research paper also analyses the importance that law holds in the promotion of Human Rights with reference to various judicial pronouncements.

What is Law?

Law may be a rule of conduct developed by the Government or society over a particular territory. Law follows certain practices and customs so as to affect crime, business, social relationships, property, finance, etc. so that the society or a country is able to function properly and thus develop without any hindrance.³ The Law is enforced and controlled by a controlling authority. Thus, in simple terms, we can say that Law is a principle or rule of conduct so established as to justify a prediction with reasonable certainty that it will be enforced by the Courts if its authority is challenged, so thus becoming binding on the people. It is not

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³ Law, available at <https://www.britannica.com/topic/law> (Visited on January 01, 2021)

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that laws once made cannot be changed; instead we can see from the past instances that laws are changed from time to time according to the needs and welfare of society. We can trace this back from our history as well because the concept of law has changed consistently from the past till now. For example, in the ancient time of Christianity, the law that was followed used to be a set of rules established by God and was followed as revealed in the Old Testament.⁴

Thus, the law that was present in the society was associated with divine rules and norms and anyone who did not follow those rules was said to be cursed by God. But later we can see that the law became more closer to humans and the emphasis shifted from God to law-makers, who created rules and norms according to which the society lived and today, the law is the system of rules which a particular country or community recognizes as regulating the actions of its members and which it may enforce by the imposition of penalties. Though the laws changed gradually with time there were laws present in every society despite the time period.

Analyzing our history, we can see that there is no society that existed without laws and this is because justice and the rule of law are also fundamental for development. The rule of law promotes an inclusive economic process and builds accountable institutions that underpin sustainable development. The rule of law helps make basic services — like education, health, and sanitation available for all and empowers citizens to deal with underlying causes of inequality and exclusion. So, rule of law is an essential component of any society to function properly and to grow.

What are Human Rights?

As described by the United Nations, Human Rights are the rights that are inherent to all human beings, regardless of their race, sex, nationality, ethnicity, language, religion, or any other status.⁵ Human Rights include various subcategories of rights like the right to life and liberty,

⁴ Rebecca Denova, Early Christianity, available at <https://www.ancient.eu/article/1205/early-christianity/> (Visited on January 01, 2021)

⁵ Human Rights, available at <https://www.un.org/en/sections/issues-depth/human-rights/> (Visited on January 01, 2021)

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freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Many people view Human Rights as a group of ethical principles that apply to everyone. Human Rights are not only restricted to any particular country; instead, it has a very wide scope and is also included in the international laws, treaties, and declarations. Many rights have been provided to human beings according to the conventions led by the United Nations Universal Declaration of Human Rights. These include –

- Marriage and Family - Every grown-up has the right to marry and have a family if they want to; nobody can force or restrict them in doing so, and if there is any kind of forceful activity then that falls under the ambit of violation of Human Rights.
- The Right to Your Own Things- Everyone has the right to share the things that they own. Nobody has the right to forcefully take our things from us and if any person takes our things with malicious intention then that is a violation of Human Rights.
- Freedom of Thought- Every person has the right to have thinking that is not influenced by others. Every person can have his own faith and belief; nobody has the right to question our beliefs.
- Freedom of Expression- We all have the proper right to express ourselves and to share what we feel.
- The Right to Public Assembly- We all have the proper right to satisfy our friends and to figure together in peace to defend our rights. Nobody can make us join a gaggle if we don't want to.
- Workers' Rights- Every grown-up has the proper right to try to employment, to a good wage for his or her work, and to hitch a union.
- The Right to Play- We all have the right to take a rest from work and to relax.

So the definition of Human Rights is often summarized within the following four points -

- They are fundamental within the sense of being essential to our humanity or to our functioning as citizens and without them the question will arise on the humanity of citizens.

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- They have an ethical dimension and are morally correct. The Human Rights provided must not go against morality and if the rights aren't morally correct then they're not to be included within the ambit of Human Rights.
- It extends to everyone and nobody must be discriminated within the rights provided and if there's any discrimination then there's a violation of Human Rights.
- It prescribes what the State must do for us and what it must not do (or allow others to do) to us that's the government duty towards a private and to save lots of the proper s of a private and therefore the government fails within the case it's unable to guard the right of a person.

The Constitution of India also provides its citizens the essential Fundamental Rights (Part III). These sections are considered to be vital elements of the Constitution. Human Rights are vital for the peace of any society or country. There are six fundamental rights in India. The presence of those rights is vital because they inculcate the values of tolerance, equality, and respect for other citizens which can help reduce friction within society. Putting Human Rights ideas into practice can help us create the type of society we would like to live in. Human Rights are a crucial part of how people interact with others within the least levels in society - in the family, the community, schools, the workplace, in politics, and in diplomacy. When people understand human rights in a better way, it's easier for them to impart justice and therefore it helps in the well-being of society. Also, these rights help in the development of any country because human rights play a crucial role in maintaining the relationships that exist between individuals and therefore the Government. It's a known incontrovertible fact that within any country the Government exercises power over its people. However, human rights ensure that this power is limited; no Government has the facility to take advantage of the humans within the ambit of human rights. It is just that States need to take care of the essential needs of the people and protect their freedoms. So human rights are vital for any society to function properly.

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How does Law promote Human Rights?

Some citizens are often aptly described as weak-willed animals. They're easily swayed by the slightest sight or sniff of power and money. This originates from insatiable greed. Greed is something that will sometimes make even the iron-willed lose their head. We have heard many stories since our childhood were many “heroes” lost their fortune to the trail of glory by being trapped by greed.

Our one aim in life has always been to seek out balance and serenity in our lives. A utopian society foresees a vision where people govern themselves. People trust one another blindly. They achieve happiness. They're ready to live their lives to the fullest. This vision, unfortunately, exists in a perfect world which frankly, is nearly impossible in today's world, because if it is a reality then there wouldn't be any news of crime. But it's not so; in fact, the crime rate in today's world is so high that sometimes the people fear that where the planet will go if an equivalent rate follows and this is often our realistic society which is a heterogeneous mixture of all types of individuals and which also includes the people that look to disturb the balance of the natural society. And this is not a new scenario; in fact, it existed since the starting of human civilization which we understand by different theories given by the philosophers for the formation of the State.

For instance, the Social Contract Theory that was explained by Hobbes; Hobbes inferred from his mechanistic theory of attribute that humans are necessarily and exclusively self-interested.⁶ All men pursue things that they perceive to be in their own individually considered best interests. They respond mechanistically by being drawn thereto which they desire and repelled by that to which they're averse.⁷ This is a universal claim: it's meant to hide all human actions under all circumstances – in society or out of it, with reference to strangers and friends alike, with reference to small ends and therefore the most generalized of human desires, like the will for power and status.

⁶ The social contract theory, available at <https://www.iep.utm.edu/soc-cont/> (Visited on January 03, 2021).

⁷ Ibid.

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We are infinitely appetitive and are only concerned with our own selves. According to Hobbes, even the reason that adults care for small children can be explicated in terms of the adults' own self-interest, so that during old age the child can take proper care of them and provide them with the basic amenities which they need at that time because that is the time when they will not be able to take proper care of their own selves. And because of these premises of human nature, human beings started fearing each other, and to avoid the exploitation of their own rights they transferred some of their rights to a political institution that can frame proper rules in the form of laws and can protect the people from the greed of each other. It is here that law plays a really important role in restoring that delicate balance back to the society and making the lives of the people cohabitation cohesive.

It is here that law helps to take care of the morality of the people as individuals and the society as a whole. Law is there to aim to balance the requirements of people against the requirements of the bulk. We accept responsibilities, we renounce some of our freedoms like not to kill others, not to harm others, not to steal from other members of the society, etc. to receive in return the benefits of society like not to be killed by others, not being harmed by others, not being robbed by other members of the society, etc. The Declaration stressed the importance of the rule of law for the three main pillars of the United Nations: peace, security, development, and human rights. Also, it is the law that controls human behaviour in society. It aids in the cooperation between members of society. Law helps to avoid any potential conflict of interest and also helps to resolve them because all the rules are codified and in case of any dispute these rules are used as a reference for the proper judgment.

This is the reason that people accept the law to maintain the social order and to live according to the rules set by the law as an absence of law provides an opportunity for criminals to go against the general foundation of society. It goes against one's conscience. This disturbs the balance of our civilized society encouraging more and more people to take up this habit. Further, there is a very famous theory of Charles Darwin named the 'Survival of the Fittest' which means that only powerful survive in the world; and looking at the disparity in the kind

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of people those who are existing in the world, it can be said that laws are needed for the survival of the people who are poor and weak because otherwise, the strong and powerful people will become a threat for the survival of others. Law plants a component of fear which can prevent in the killing of fellow citizens. Laws tell us what to expect as consequences as a result of one's own actions. It makes us look before we leap. It is not only there to protect the people but also to destroy those who violate the right of any other person. People think twice before violating the law because they are very well aware that one abuse of the law will affect them economically, mentally, and physically because there are provisions for punishment in case of violation of the law. So five basic principles can be deduced as to why laws are important –

- Harm Principle- According to this principle the laws are made to protect people from being harmed by others. Laws made against violent crimes and property crimes fall into this category. These laws are very important because, without these laws, a society ultimately degenerates into despotism.
- Parental Principle- These are the rules that are made to prevent self-harm like rules made against the consumption of drugs, laws for taking proper care of children, etc.
- Morality Principle- The laws that are mainly focused on promoting morality within the society fall under the ambit of this principle. It may include the laws that include sex, religion, etc.
- Donation Principle- These laws are the laws that include the granting of goods or services of some kind to its citizens.
- Statist Principle- This principle includes the laws that are necessary for the stability of any Government. For example, laws like espionage, treason, etc.

It can be implied by common sense that law helps us to survive in a society and it is convenient. Convenient things are comfortable and humans always look for comfort above all other things, apart from happiness and the laws also help in giving happiness to people.

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Also, the law helps in getting to obviate the social barriers that exist in our society. Through the law, we survive and thrive. Hence law is important in a society for the protection of human rights.

Current Situation

Laws play a big role in today's society but watching the realistic aspect of the society we encounter some harsh realities of the law. We encounter incidences that clearly depict abuse and violation of human rights. There are many laws to curb crime but good laws aren't enough to get rid of violations of human rights, instead good implementation is additionally needed. Mere noting down of some laws on the paper won't help to eradicate the crimes against the rights of humans but those written laws must be strictly enforced to inculcate a fear within the minds of individuals so that they will think twice before violating the right of the other person.

Also, by analysing the present scenario we will deduce that the law has become a tool of setting and control of the ruling majority over the oppressed minority because the ruling elite attempts to carry a strict control and elaborate laws which meet the interests of the few who are in power, while interests of the bulk and average citizens are often neglected. On the one hand, the law guarantees the equality of all people before law and provision of equal rights and liberties for all people while on the opposite hand, the inequality persists and therefore the equality of rights and liberties doesn't always mean the equality of opportunities. It's not true that the fear of not committing the crimes will only come if we've strict laws; instead, the fear will come if we have the right implementation of laws. People follow laws because they're scared of the circumstances created if they're going to violate the law but even stricter laws cannot act as a deterrent until they are not implemented properly.

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Judicial Outlook – Looking at some of the Landmark Cases

India being a democratic country, strives to guard the rights of the people. There are constant efforts by the Government and other institutions of power that recognize the necessity to guard the rights of all the people. Our Constitution also embodies these principles in its framework and implements laws that strive to realize equality. Similarly, at a world level, efforts are made by the United Nations through its Universal Declaration of Human Rights (1948), International Covenant on Civil and Political Rights (1966), and International Covenant on Economic, Social, and Cultural Rights (1966). This doesn't just limit providing provisions for the fundamental rights but also the protection of those rights and ensuring everyone has the liberty to enjoy the rights.

Some landmark judgments that have successfully promoted Human Rights in India are –

Maneka Gandhi v. Union of India

The petitioner (Maneka Gandhi) was a journalist who was asked to surrender her passport under the rationale “in the interest of the overall public.” During this case, the judgment expanded the scope of Article 21 exponentially and ensured the protection of one's life and liberty in its real sense. Through this case, the Court established that fundamental rights aren't distinct and are mutually interdependent. Through this judgment, Courts could interpret Article 21 in a way that benefitted the people and promoted the essential principles of human rights.⁸

M.C Mehta v. Union of India

In this case, the Court held that an organization "owes an absolute and non-delegable duty to the community to make sure that no harm results from anyone on account of the hazardous nature of the activity which it has undertaken." Through this decision, the Court upheld the "Right to a Clean Environment" and therefore the "Right to Life and Liberty" under Article 21

⁸ Maneka Gandhi v. Union of India (1978) SCR (2) 621

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by awarding exemplary compensation to the victims of the tragedy. During this case, the State safeguarded the human rights of the aggrieved victims.⁹

Vishakha and Ors. v. State of Rajasthan

Basic human rights to a person will provide them with a secure workplace with basic amenities and hygiene. The Vishaka case was a landmark judgment because it sets the 'Vishaka Guidelines,' which set norms against harassment at the workplace. The violation of a lady and her fundamental rights that hampered her right to life and her right to live a dignified life, which forms an important requirement for each individual within the workplace, caused the necessity for the 'Vishaka Guidelines.' The absence of appropriate laws made the Court look outside the ambit of Indian laws and to provisions of the 'Convention on the Elimination of All sorts of Discrimination against Women' for guidance which invariably stands as an example for an attempt by law to protect human rights of people in order that they will live a peaceful and dignified life within the society.¹⁰

Navtej Singh Johar v. Union of India

Human rights are undeniable rights granted to each individual no matter their race, class, caste, gender, or sexual identity. In 2018, the Supreme Court of India unanimously held that Section 377 of the Indian Penal Code, which stated that consenting sexual conduct between two adults of equivalent sex as criminal, is unconstitutional. This act was challenged because it was in violation of the right to privacy, freedom, and equality; it also discriminated against them and prevented them from living a life of dignity. The discrimination supported sexual orientation, which forms an integral part of self-identity and denial of the same, violates the fundamental rights provided to the citizens.¹¹

⁹ M.C Mehta v. Union of India (1987) SCR (1) 819

¹⁰ Vishaka and Ors. V. State of Rajasthan (1997) AIR S.C 3011

¹¹ Navtej Singh Johar v. Union of India (2018) W.P (CrL.) 76 of 2016

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Conclusion

Just because a mere percentage of crime is happening in society, it does not mean that laws are useless. If there would not have been laws then the whole world would have been converted into a battleground in which there would not have been any courtesy left. Law is made and put into practice through societal processes. Simultaneously law affects and affects social change. Law has the complex vivacity of a living organism. We can say that law may be a science characterized by movement and adaptation. Rules are neither created nor applied during a vacuum; on the opposite hand, they're created and used time and again for a purpose. Rules are intended to manoeuvre us. The law allows for straightforward adoption of changes that occur within the society. The behaviour of humans towards others is controlled, directly and indirectly, through these legal rules, and without laws, men would be beasts who wouldn't know how to behave with each other. So, to avoid this condition and to maintain equilibrium in society, we must have proper laws.