

Collective rights vs. Individual rights

Rakesh Chandra

Lucknow University, Dept. of Law, New Campus, Jankipuram, Lucknow, Uttar Pradesh, India

Abstract

Human Rights are those rights which every human being is entitled to enjoy as a human being. These rights are natural rights and can't be taken away by any system of government. Post- Second World War scenario witnessed the growth and emphasis on human rights in an unprecedented way. Universal Declaration of Human Rights, 1948 proved to be a bulwark of re-emphasis on human rights for human beings all over the world. Since then two generations of human rights have registered their presence. The first generation rights were "liberty-oriented", the second generation rights were "security oriented" rights. Both these rights were individual rights. However, in the latter part of the twentieth Century, the third generation of human rights were also initiated which were primarily collective rights. Since then, there is a raging debate among the International law scholars and theorists regarding the acceptance of collective rights within the ambit of human rights. Many of them think that human rights can only be individualistic and not collective. This paper tries to explore this issue and find plausible solution.

Keywords: human rights, individual rights, collective rights, rights and domestic laws

Introduction

Human rights are those activities, conditions, and freedoms that all human beings are entitled to enjoy, by virtue of their humanity. They include civil, political, economic, social and cultural rights. Human rights are inherent, inalienable, interdependent, and indivisible, meaning they cannot be granted or taken away, the enjoyment of one right affects the enjoyment of others, and they must all be respected^[1].

Principally developed in the west, modern human rights have been directly inspired by, and evolved from, two pivotal Western Declarations. Following on the Magna Carta, which set limits on the powers of royal government in the thirteenth century England, the 1776 American Declaration of Independence and the 1789 French Declaration of the Rights of Man and Citizen were landmarks of how revolutionary visions could be transformed into national law and made into justifiable guarantees against future abuse. Both of them provided guided aspects of the language and content of the cornerstone of modern human rights, the Universal Declaration of Human Rights (UDHR), 1948. The French and U.S. Declarations, as well as the UDHR, are all constructs and manifestations of western modernist culture. The French Declaration of the Rights of Man and Citizen and the U.S. Declaration of Independence provided the foundational concept of inherent, inalienable human rights, now cemented with modern society as a central component of the UDHR. Inherent, in so much as rights are awarded to all humans simply for being human, and inalienable, because being human can be not lost, stolen or forfeited. The French Declaration's influence on the inherent qualities of 'man' can be seen when we compare Article 1 of the UDHR, which reads, "All human beings are born free and equal in dignity and rights", and Article 1 of the 1789 French Declaration which reads, "Men are born free and equal in dignity and rights." The UDHR, in its own words, reaffirmed the faith of the people of the world "*in fundamental human rights, in the dignity and worth of the human person and in the equal rights*

of men and women". In 1966, the U.N. General Assembly produced two treaties that were meant to be the legally binding version of the U.D.H.R.; predictably, these were:

1. The International Covenant on Civil and Political Rights (ICCPR), and
2. The International Covenant on Economic, Social and Cultural Rights (ICESCR).

These two treaties are the bedrock of today's human rights structure. Together with the UDHR, they are sometimes referred to as the International Bill of Rights. These rights can be put into three categories

1. Civil And Political Rights

This right is also called first generation rights. These are "liberty-oriented" and include the rights to life, liberty and security of the individual; freedom from torture and slavery; political participation; freedom of opinion, expression, thought, conscience and religion; freedom of association and assembly.

2. Economic And Social Rights

These rights are also called second generation rights. These are "security-oriented" rights, for example the rights to work; education; a reasonable standard of living; food; shelter and healthcare.

3. Environmental, Cultural And Developmental Rights

Karel Vasak introduced and popularized the idea of these rights which are also called third generation rights. These rights are based on the principle of fraternity, or solidarity. These include the right to live in an environment that is clear and protected from destruction and rights to cultural, political and economic development.

The third generation human rights are collective group rights, in contrast with the rights belonging to the first and second generations, which were individual rights in nature. The third generation of human rights, in the opinion of Karel Vasak,

were a response to the phenomenon of global interdependence and their essential feature was that they could be realized only “by the combined efforts of all social factors individuals, states, public and private associations, and the international community.” Since the propagation of the idea of third generation rights in the human rights regime, a new debate has originated as the question whether ‘collective rights’ can be placed into the sphere of human rights. Many a critics and experts feel that only individual rights can be covered under human rights. The ramifications of this debate needs to be examined in detail as under:

Individual and Group rights

Individual rights are held by individual people; even if they are group differentiated, which most rights are, they remain individual rights if the right- holders are the individuals themselves. A right is a group right only if it is borne by the group qua group. If the individuals who form a group hold rights as separate individuals, their several individual rights do not add up to a group right. Group rights have historically been used both to infringe upon and to facilitate individual rights, and the concept remains controversial.

Philosophical Interpretations

In the political views of classical liberals and some right-libertarians, the role of the government is solely to identify, protect, and enforce the natural rights of the individual while attempting to assure just remedies for transgressions. Liberal government that respect individual rights often provide for systematic controls that protect individual rights such as a system of due process in criminal justice. Collectivist states are generally considered to be oppressive by such classical liberals and libertarians precisely because they do not respect individual rights ^[2].

Ayn Rand, developer of the philosophy of objectivism, asserted that a group, as such, has no rights. She maintained that only an individual can possess rights, and therefore the expression “individual rights” is a redundancy while the expression “collective rights” is a contradiction in terms. In this view, a person can neither acquire new rights by joining a group nor lose the rights which he does possess. Man can be in a group without want or the group minority, without rights. Adam Smith, in 1776 in his book *An Inquiry into the Nature and Causes of the Wealth of Nations*, describes the right of each successive generation, as a group, collectively, to the earth and all the earth possesses. The *Declaration of Independence* states several group, or collective rights of the people as well as the states, for example the Right of the People: “whenever any form of government becomes destructive of these ends, it is the Right of the People to alter or to abolish it” and the right of the states: “... as Free and Independent States, they have full Power to levy war, conclude Peace, contract alliances, establish commerce, and to do all other Acts and Things which Independent States may of right do.” ^[3]

The first conception of group rights is the “collective” conception. Joseph Raz sets it out most clearly ^[4]. Raz subscribes to an interest theory of rights. The formal conditions Raz lays down for group right are as follows: “First, it exists because an aspect of the interest of human beings justifies holding some person (s) to be subject to a duty. Second, the interests in question are the interests of

individuals as members of a group in a public good and the right is a right to that public good because it serves their interest as members of the group. Thirdly, the interest of no single member of that group in that public good is sufficient by itself to justify holding another person to be subject to a duty.” ^[5] (1986, 208).

Some other theorists whose approach to group rights is consistent with what is described here as the “Collective” Conception are Nathan Brett (1991), Alan Buchanan (1993, 1994) Leslie Green (1991), Lesley Jacobs (1991) and Seumas Miller (2001).

Incorporation of rights in domestic law

Human rights consciousness and enforcement “trickle down” from international to national levels in several ways. At the broadest level, the language of human rights is used when the community of nations attempts to put pressure on nations which have little regard for the rights of their citizens. Within nation states, the language of rights is used by non-governmental organizations and human rights monitors, as well as by politicians, as a motor for social or political change. In more concrete terms, national governments sign human rights treaties, and several United Nations treaties require them to make periodic reports on the extent to which the rights in question are secured for their citizens. But a human rights culture will only really be created in a particular society if human rights are incorporated into its national law. This may be by “ordinary” legislation, or, in the common law world in particular, by judicial application of internationally recognized human rights norms in national courts. But the most effective way to secure human rights for national citizens is by enacting them as entrenched legislation, which has a special status and cannot be easily changed, such as a Bill of Rights or Constitution ^[6]. In this context, it would be feasible to study how far the inclusion of individual and collective rights have been made in various constitutions of the world.

Canada

Well before the entrenching of the *Canadian Charter of Rights and Freedoms* in 1982, Canadian enjoyed certain fundamental individual freedoms protected by the laws and courts, as well as commitment to equality. Because of its recognition of cultural diversity, Canada has not followed the standard model of liberal republicanism, in which citizens are granted a uniform set of individual- and purportedly “neutral” – rights based on a common citizenship. Instead, Canadians have always chosen some measure of protection and differentiated treatment for certain groups in society, based on the notion of group rights.

The British North America Act, 1867 and the Constitution Act, 1982 each recognize a range of group-based rights for example, educational rights for religious minorities (BNAAct) and minority language educational rights (the charter of Rights and Freedoms) that are held by individuals but exercised collectively through institutional arrangements granting the rights to public funding to the minority groups for separate school in some provinces.

Sections 15 and 28 of the Charter of Rights and Freedoms extended the original group-based protections already present in human rights covenants and legislations ^[7]. The balance sought between individual and group rights is also expressed

in Section 25 and 35 of the *Charter*, which define a specific set of protections for the group rights of Aboriginal peoples living in Canada. The Courts have played a significant role since 1982 elaborating a balance between the group rights of aboriginal peoples and the guarantee of individual to all Canadians^[8].

South Africa

The development of the Fundamental Rights Chapter of the South African Constitution is one of the most important recent examples of how, and why, human rights might be incorporated into national law. The main concerns of African traditional leaders was that their group rights should be preserved which were focused around African customary law. Ultimately the compromise which was determined was the inclusion of a right “to participate in the cultural life of one’s choice”, while not exempting customary law from the equality provisions of the Constitution. This pragmatic compromise seems far from the vision of the unity of group and individual rights^[9].

However, the Chapter two of the final South African Constitution of 1996 begins with a statement of principle that the Bill of Rights is a cornerstone of South African democracy, enshrining the rights and affirming the democratic values of human dignity, equality and freedom. The Bill sets out the principles of equality and non-discrimination (Sec. 9) and of human dignity (Sec. 10), before stating the main first generation rights; life (Sec.11), freedom and security of the person (sec.12), a prohibition on slavery (Sec. 13), right to privacy (Sec.14), freedom of opinion and religion (Sec. 15), freedom of expression, assembly (etc.), and association (Ss. 16-18), political and citizenship rights (Sec.19- 20), and mobility rights (Sec. 21). The Bill of Rights then deals with labour relations (Sec- 22-23), environment (Sec. 24) and property (Sec. 25), before declaring the rights to adequate housing, healthcare, food, water social security, and education (SS- 26-27, 29). The special rights of children are set out in some detail (Sec.28), and the linguistic, cultural, and religious rights of individuals and groups are expressed (SS. 30, 31)^[10]. Thus the aforementioned Bill of Rights in the South African Constitution contain a fair mix of individual and group rights.

China

The problems which arise when human rights thinking is challenged as a foreign, Western way of perceiving the world, are not confined to Africa. In an Asian Context, Gong Xiang Rui (1993) describes the Chinese view:

“In China, it is the state that comes first, the collective second, and the individual the last. If any conflict should occur, the collective benefit (such as that of the family, the school and the Union) should be sacrificed for the State’s interest, similarly, the individual’s personal interest should give way to the interest of the collectives and the State.... On the other hand, the western theorists adopt an opposite idea: individual-collective-state. (1993:492-493)^[11]

Xiang, like Little and Reed (1989), suggests that the subordination of the individual in Chinese legal thought is not a modern innovation, but has roots deep within the Confucian vision of society and the individual’s role within it^[12].

Collective Rights Vs. Individual rights

Can a right borne by a group be a human right? For some analysts, the answer is obviously, “No”. They argue that human rights are the rights of human beings and, self-evidently, each human being is an individual being. Groups may have rights of some sort, but, whatever those rights might be, they cannot be human rights. Human rights must be borne by human individuals^[13]. Other analysts, unimpressed by that simple logic, insist that human rights can take collective as well as individual forms. They argue that much of what is fundamentally important to human beings relates to “goods” and “bads” that people experience collectively rather than individually: if we insist that human rights must be rights that people can hold only as independent individuals, our conception of human rights will not match the social reality of the human condition^[14].

Among those who distinguish between group rights and human rights, a further division is discernible. For some, the reality of the conceptual difference between human rights and group rights does not betoken any antagonism between the two forms of rights. Rather, they regard some group rights, such as the rights of peoples or the rights of cultural minorities, as close components of human rights. They believe that the reasons that lead us to ascribe rights to individuals are also reasons why we would recognize certain forms of group rights: human rights may be conceptually distinct from group rights, but the two sorts of rights are united by the same underlying values and concerns^[15].

For others, however, the distinction between group rights and human rights is of more than merely analytical significance. They conceive group rights as potential threats to individual rights: group rights are often rights claimed against, or over, individuals. Traditionally, a major purpose of the doctrine of human rights has been to protect individuals from the power of groups, whether or not that power is institutionalized. These theorists contend that revising the doctrine of human rights so that it incorporates group rights entails the risk of defeating that very purpose. Instead of safeguarding individuals against the predators of groups, they argue, a doctrine that legitimates those predations would result^[16]. The first conception of group rights is the “collective” conception. Thus, in a situation where a factory gives off polluting fumes that adversely affect the lives of people who live in its vicinity, the people’s right to stop the factory from engaging in the polluting activity depends upon several factors. Suppose that the pollution is serious in that it has a significantly adverse impact upon the quality of people’s lives, but is not so serious that it constitutes a significant threat to any individuals’ health. In that case, we may conclude that the interest of any single individual is not suffering the pollution is not enough, on its own, to justify imposing a duty upon the factory’s owner to stop the pollution. However, if we consider the interests of all of the individuals adversely affected by the pollution, their aggregate interest may well suffice to ground the duty. If it does, then those living in the vicinity of the factory have a right, as a group, to stop the factory’s polluting activity. As a group, they jointly possess a right that none of them possesses individually. Thus, in this case, we have a right that is properly described as a group right^[17].

Indigenous peoples generally comprise of tribals and aborigines of any country. There is no universal definition.

However, attempts of a definition can be found in international law, such as the 1989 International Labour Organization's convention and the 2007 Declaration on the Rights of Indigenous People. Most human rights treaties reflect an individualistic concept of rights and right-holders. But for many indigenous peoples their identity as an individual is inseparably connected to the community to which that individual belongs. Therefore, the problem is that whilst human rights treaties and instruments guarantee individual rights, indigenous peoples ask for protection of their collective rights as a group. The international community now recognizes that special measures are required to protect the rights of the world's indigenous peoples^[18]. In 2007, the United Nations General Assembly adopted the U.N. Declaration on the Rights of Indigenous Peoples. In contrast to the aspirational, non-binding nature of the Declaration, the International Covenant on Civil and Political Rights, the ICCPR carries the weight of a treaty. Adopted in 1966, Article 27 of the ICCPR applies to ethnic, religious, or linguistic minorities located within host nations. It provides that those fitting the description must be afforded the right to enjoy their own culture with the other members of their group. Article 27 is seen as encompassing an individual right of cultural access by implicitly requiring preservation of the group in order for that culture to continue to exist^[19]. Individuals may hold right both as an individual and as a member of a community; such as cultural rights which are held by members of that culture, or family rights, which are held by members of a family. But the culture or family as collectives do not possess rights. The same can be said for rights awarded to religious or linguistic minorities to preserve their religion and language. These rights are collective in nature, but the beneficiary is the individual. Right to health, environment and sustainable development are the latest entries in the category of Group Rights facing the same dilemma as mentioned above.

Conclusion

Criticism of group rights can take a case-by-case form. However, much criticism is directed at the very idea of group rights. That criticism is generally of two sorts: either it is skeptical of the claim that groups can hold rights or it is fearful of the implications or consequences of ascribing rights to groups. A number of things might be said in response to these worries. For, very much depends upon the content that we give group rights. The possibility that we might find some group rights objectionable is no reason to dismiss group rights altogether. Secondly, it would seem strangely arbitrary to insist that the objects of rights can be only goods that individuals can enjoy as independent individuals and never goods they can enjoy only in association with others. Thirdly, there is no reason why individual rights and group rights should not both figure in our moral thinking.

There is also a well-established tradition of political thought, associated particularly with Alexis de Tocqueville and the English Pluralists, which sees the existence of groups as essential to the dispersion of power and maintenance of liberty within a society. According to that tradition, groups do not glower threateningly at individual. Rather, the rights of groups help to counter and hold in check a potentially overmighty State.

Therefore, Group rights and individual rights, can, then, co-exist more or less peacefully, but it is also possible for them to enjoy a more positive and mutually supportive relationship. Indeed, individual rights may sometimes be rights only because they promote social goods. The interests that group rights and individual right seek to protect will frequently be the same interests Both the rights are complementary to each other in solving the complex issues of the modern world.

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