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A CRITICAL ANALYSIS OF UNIVERSAL DECLARATION OF HUMAN RIGHTS: LEGITIMATE EFFECTIVENESS

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ABSTRACT

The Universal Declaration of Human Rights (UDHR) is a key document that delineates the essential rights and freedoms that belong to every individual, irrespective of their nationality, ethnicity, religion, or any other characteristic. Ratified by the United Nations General Assembly in 1948, the UDHR acts as a universal benchmark for all people and nations, motivating and guiding the evolution of international human rights legislation. Although it is not a treaty, it has profoundly impacted the formulation of many legally binding international human rights agreements. The Universal Declaration of Human Rights (UDHR) has been highly influential and remains relevant, but its effectiveness is mixed. Human rights are essential rights and freedoms that every individual possesses from birth to death. They are applicable no matter your origin, beliefs, or lifestyle choices. These rights are founded on common values such as dignity, fairness, equality, respect, and independence, which are traditionally linked to the philosophy of natural law. The idea of human rights surfaced after World War II with the United Nations General Assembly's adoption of the Universal Declaration of Human Rights (UDHR) in 1948. For the first time, the UDHR outlines fundamental human rights that should be universally safeguarded, establishing itself as a foundational document in international human rights law. Various national and international institutions are responsible for the protection and promotion of human rights. While governments hold the primary duty to safeguard and advance human rights, non-governmental organizations (NGOs) and international entities like the United Nations play vital roles in monitoring and addressing violations of these rights. Global challenges to human rights continue to exist, including discrimination, inequality, and injustice. Advocacy and education are essential for raising awareness and cultivating a culture that respects human rights.

ISSN (O): 2584-2196

KEYWORDS

Human Rights, Universal Declaration of Human Rights, International Organisations, Fundamental Rights

INTRODUCTION

The UDHR stands for the Universal Declaration of Human Rights. This Declaration is upheld by the United Nations. The United Nations is an international organization dedicated to the protection of human rights and the advancement of women and children. The establishment of the United Nations was a response to the adverse effects of World War II. The Universal Declaration of Human Rights outlines the rights of individuals in every nation. It is universally recognized as applicable in all countries. Each nation is obligated to safeguard the human rights of its citizens. The Universal Declaration of Human Rights addresses the protection of human rights and fundamental freedoms. This Declaration was adopted in 1948. Alongside the UDHR, two covenants were also adopted by the United Nations: the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). The UDHR comprises 30 articles that address the fundamental rights of human beings. Among these 30 articles, 21 pertain to civil and political rights, while 6 focus on economic and social rights. The International Covenant on Civil and Political Rights consists of 53 articles and is organized into six parts. The Covenant on Economic, Social, and Cultural Rights includes 31 articles, which are divided into five parts.

UDHR CIVIL RIGHTS AND POLITICAL RIGHTS ARE AS FOLLOWS

Article 2 to 21 outlines the political and civil rights that are universally enforceable in every nation:-

- Right to life, liberty, and personal security.
- Freedom from slavery.
- Prohibition of torture, inhuman or degrading treatment or punishment.
- Recognition as a legal person.
- Equality before the law and equal protection under the law without discrimination.
- Access to effective remedies through national tribunals.
- Freedom from arbitrary arrest, detention, or exile.
- Right to a fair and public trial by an independent and impartial tribunal.

ISSN (O): 2584-2196

- Presumption of innocence until proven guilty in a public trial with all necessary guarantees for defense in criminal cases.
- Freedom from ex post facto laws.
- Right to privacy, family, home, and correspondence.
- Right to freedom of movement and residence within the borders of the state.
- Right to leave any country, including one's own, and return to it.
- Right to seek and enjoy asylum in other countries.
- Right to nationality.
- Right to marry and establish a family.
- Right to own property.
- Right to freedom of thought, conscience, and religion.
- Right to freedom of opinion and expression.
- Right to peaceful assembly and association.
- Right to participate in the governance of one's country.

ECONOMIC AND SOCIAL RIGHTS ARE AS FOLLOWS

- Right to social security.
- Right to work and freely choose employment.
- Right to rest and leisure.
- Right to a standard of living sufficient for the health of oneself and one's family.
- Right to education.
- Right to engage in cultural life.
- Right to a just social and international order.

This article discusses specific limitations and responsibilities that citizens have towards the state. These aspects are crucial for fostering a peaceful environment free from fear, threats, or discrimination. Article 29 stipulates that these rights are granted to individuals for their fundamental development and meaningful existence. Human Rights, as outlined in the declaration, are essential in a moral context and are characterized as universal, indivisible, interdependent, and interrelated.

ISSN (O): 2584-2196

IS THE DECLARATION LEGALLY BINDING IN ALL STATES?

The Declaration aims to protect and promote Human Rights. It serves as a call to action for states to make relevant decisions to safeguard human rights. The Declaration was not designed to be legally binding and does not impose legal obligations on states. In simpler terms, the Declaration functions as a recommendation rather than a strict legal requirement for states.

Lauterpacht accurately observed that: "since it is not a legal instrument, the declaration seems to lie outside the realm of international law, and its provisions cannot be subject to legal interpretation."

The Declaration is designed for all individuals and states, regardless of their membership in the United Nations. Its main objective is to guarantee the safety of every person and to encourage everyone to work towards their progressive realization. The Declaration is applicable across all cultural contexts and can be tailored to suit any nation.

CRITICISM

It has been pointed out that while the Declaration is proclaimed universally, it is not universally or legally recognized by every state globally due to various political, economic, social, and cultural constraints. Many states reject the Declaration because of military governance, insufficient resources, ongoing struggles for independence, and the presence of socialist or communist regimes. This is one reason why not all states have embraced this Declaration, as countries vary in their status; there are developed nations, developing nations, least developed nations, and under-developed nations. When considering developing, least developed, and under-developed countries, these nations face various conflicts and disputes. For example, Article 21 of the declaration asserts that the right to participate in the governance of one's country cannot be realized in nations grappling with military rule, social issues, or communist governance. This criticism highlights that if not all countries adopt the Declaration, it will be challenging to safeguard and advance human rights. Another Criticisms of UDHR:

Universality and Cultural Relativism:

Some contend that the UDHR embodies Western values and may not be universally relevant, especially in cultures that emphasize communal rights over individual rights.

ISSN (O): 2584-2196

This viewpoint, referred to as cultural relativism, posits that the principles of the UDHR may not be appropriate for every society.

Additionally, some critics assert that the UDHR's focus on individual rights may insufficiently address the rights of groups or collectives.

2. Lack of Enforcement:

The UDHR is not legally enforceable, resulting in a weak mechanism for ensuring adherence.

Although it establishes a benchmark for human rights, there is no robust mechanism to compel nations to honor the principles set forth in the declaration.

3. Emphasis on Specific Rights:

Critics claim that the UDHR prioritizes civil and political rights over economic and social rights.

Some also argue that the UDHR's concentration on individual rights may neglect the significance of group rights.

4. Western Bias and Colonial Legacy:

Some assert that the drafting of the UDHR was shaped by Western viewpoints and may not sufficiently reflect the interests of non-Western nations.

The post-colonial roots of the UDHR have also faced criticism, with some suggesting that it mirrors the interests of former colonial powers.

5. Idealism vs. Realpolitik:

Critics maintain that the idealistic tenets of the UDHR may conflict with the practical realities of international relations.

They argue that governments might prioritize national interests over the enforcement of human rights, resulting in violations despite international accords.

6. Limitations and Potential Neglect:

Some contend that the UDHR's emphasis on individual rights may disregard the rights of future generations or the necessity of environmental protection.

Others highlight that the UDHR may not sufficiently address the rights of marginalized groups, including women or indigenous populations.

ISSN (O): 2584-2196

VIOLATION OF UDHR

Violation of Human Rights can manifest in various forms, including Civil, Political, Economic, and Cultural Rights. These rights may be infringed upon either directly or indirectly. It is the responsibility of states to address these violations by ensuring justice for their citizens through the framework of the UDHR and two covenants.

REPORTING PROCEDURE IN UNITED NATIONS IN COVENANTS

- The Reporting Procedure:-

In this process, the state is required to report on the measures taken by various states to promote and protect human rights. The report must be submitted within one year or upon request from the general secretary.

- Interstate Communications System:-

In this context, a state can report on violations of Human Rights provisions of the covenant that have not been implemented by another state. The affected state has the right to file a complaint regarding the violation before the Human Rights Committee.

- Conciliation Procedure:-

The Human Rights Committee employs the Conciliation Procedure for cases arising from the interstate communications system that remain unresolved. Such cases are addressed through this Conciliation Procedure.

- Individual's Communication System:-

Individuals possess the right to submit a petition to the Human Rights Committee against a state that violates any rights outlined in the covenant on Civil and Political Rights.

- India and the United Nations

India plays a significant and peaceful role in relation to the United Nations. India has embraced the Declaration on Human Rights. The Fundamental Rights in India are inspired by the UDHR. The Indian constitution is heavily influenced by this Declaration. In what ways does the Indian Constitution draw inspiration from the UDHR?

Equality before the law, the prohibition of discrimination, equality of opportunity, freedom of speech and expression, freedom of peaceful assembly, the right to form associations or unions, protection against conviction for offenses, safeguarding of life and personal liberty, protection against slavery and forced labor, freedom of conscience and religion, and remedies for the enforcement of rights are encapsulated in Articles 7, 21(2), 19, 20(1), 23(4), 13(1), 11(2), 3, 4, 18,

ISSN (O): 2584-2196

and 8 of the UDHR. In the Indian Constitution, these rights are reflected in Articles 14, 15(1), 16(1), 19(1)(a), 19(1)(b), 19(1)(c), 19(1)(d), 20(1), 21, 23, 25(1), and 32.

IS UDHR EFFECTIVE LAW:

The UDHR inspired over seventy international human rights treaties and has shaped both global and national laws, making human rights a global norm and benchmark. It provides a powerful advocacy tool and a standard to judge governments, helping oppressed groups demand rights and independence. Many of its principles are now reflected in binding international treaties and domestic laws.

Limitations:

The UDHR is not legally binding by itself, so enforcement depends on countries' willingness and on subsequent treaties. Critics argue it is too universalistic, reflecting Eurocentric and male-dominated perspectives, and does not adequately address the needs of women, minorities, and non-Western cultures. Human rights abuses persist globally, and the UDHR alone cannot prevent violations—its impact is often more symbolic or aspirational. In summary, the UDHR is effective as a foundational document that set global expectations and inspired legal frameworks, but it has limitations in universality and enforcement. The UDHR is a declaration rather than a legally binding treaty, and it does not have a formal enforcement mechanism. It serves as a normative structure, enabling individuals and organizations to hold both states and individuals responsible for breaches of human rights.

CONCLUSION

As we have noted, India has embraced the treaties established by the UN and has also enacted new laws tailored to its own context. The Indian Constitution draws inspiration from the UDHR, and the fundamental rights are structured accordingly. If an individual experiences any violation of their human rights, they can directly reach out to the United Nations. The UN has played a crucial role globally in fostering peace and harmony while also addressing the root causes of conflict. Additionally, the UN holds states accountable by requesting reports. However, it can be argued that under-declaration is one of the more successful declarations, yet a significant drawback is that it is not universally accepted by all nations. This complicates the global effort to maintain peace

ISSN (O): 2584-2196

and harmony. Nevertheless, newly independent countries express satisfaction with the UN's stance on human rights. The UDHR continues to be adopted by various newly independent nations, indicating a growing recognition of the importance of human rights. The Universal Declaration of Human Rights (UDHR) is a pivotal document that set a universal benchmark for human rights around the world and motivated the creation of international human rights legislation and various binding treaties. Although it lacks legal enforceability, its tenets have been extensively incorporated into national constitutions and legal frameworks, significantly contributing to the reduction of issues such as racial discrimination, torture, and slavery. Nonetheless, the effectiveness of the UDHR is constrained by its non-binding status and dependence on state cooperation for implementation, resulting in the continued occurrence of human rights abuses in numerous regions. In spite of these obstacles, the UDHR persists as a formidable moral and legal reference, with its impact continuing to expand as a basis for ongoing reforms and the establishment of new human rights accords.

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