

Vasak's Theory of Three Generations of Human Rights: A Critical Evaluation

Dinesh Sharma



Professor, Department of Political Science, Pt. L. M. S. Campus, Risikesh.

Abstract

Human right has increasingly earned itself universal consensus as one of the major issues with relevance cutting across the national frontiers and difference in the socio-economic characteristics. Despite there being near unanimous agreement on the acceptance of inherent nature of rights of the man just by virtue of being man, the fact remains that there is a massive difference in the content and priorities of the structure of the human rights. A glimpse on the course of the developments in the course of the struggle of man against the restraints imposed on him provides sufficient information on the

different perceptions of the exact nature and content of what should be a proper domain of claims of man against outside interference, regulation and control. As an issue with umbilical chord to empirical world on account of practical application in the human settings, there is a dire need to understand the nature of the content of the different phases in the evolution of the human rights. It is in this context that Vasaks's theory of 3 generations of human rights gains importance of the highest magnitude.

The classification provided by Karel Vasak, which offers the notion of three generations of rights, has despite many objections from the various corners been the most practical, commonly used, and comprehensive categorization of human rights even after 4 decades. Although this classification has been put to a number of criticisms on various grounds ever since the outset, it has been widely used by scholars, activists and experts as a useful tool to organise the discourse on human rights. This research paper is focused on tracing the conceptual growth of the three generations of human rights as advocated by Vasak, their reflection in the international structures, their inter-relationship and a critically examination of the criticisms raised against it.

Key Words: Human Rights, UDHR, ICCPR, ICESCR, Solidarity Rights

Introduction

Human rights, rights of man by virtue of being human being have taken the shape of almost a religion in the 20th century setting ethical parameters to measure for the evaluation of a government's legitimacy and accountability to its people. Ever since the awareness of the human centric world view of rights, the rights of the man have been viewed as universal, indivisible, interdependent, and inalienable demands of man for a meaningful conception of life. Accordingly, these have been deemed and therefore projected as the indispensable conditions without which a life of dignity is not possible for a man. As these are rooted and implanted by nature itself, they don't depend on the legal arm of the state and wisdom of the society for their legitimacy and authority. The increasing recognition of the man at the nucleus of the entire social political cosmos has come to earmark for itself a position where state's legitimacy itself has come to draw from the measures and efficacy to preserve and promote the centrality of the human rights within its jurisdiction.

The evolution of human rights is a reflection of the increasing realization of the needs and requirements of the man to live and grow as he deems best for himself as different from the structural constraints imposed by his socio- political milieu. Ever since the onset of the civilized life of man, search for a proper relationship between man as the unit and his human setting as

the whole has mostly inclined in favour of the later and prepared the ground from time to time for the revolt of the authority of man to find his best self.

During the early years of the civilized man, the combined impact of the relative dearth of knowledge, insecurity, challenges to existence and survival might have contributed to the indispensability of the need of centralized leadership endowed with unbridled control over all the resources and power leaving little or no opportunity for inseparate and inalienable space for common man. During the medieval period too, the stratified nature of the medieval feudal society too obliterated any scope for the identity, rights and dignity of the common man. Two categories were categorically identifiable in the European medieval society: the first represented the common man who was devoid of power, privileges and rights and the other consisted of the nobles, clergy and royal ruling class which had monopoly over the authority, resources and decision making.

From the human rights' viewpoint, rediscovery of the classical literature, art, culture and philosophy identified as the renaissance during 14th to 17th century was a turning point challenging the old notions in all walks of life and laying foundation of a new world view. An important development in this connection took place in the 17th century when the theory of the Two Swords came to an end with the surrender of the Pope's authority to the ruling royal political class. This formally announced the supremacy of the nation- state as formally manifested in the Peace of Westphalia in 1648 at the end of the 30 years' war and 80 years' war.

This event proved to be of particular importance as the feudal and priestly aristocracy were erased as the intermediate structures between central-monopolistic political authority and the common man bringing them into a closer relationship. The growth of the mercantile capitalism came to represent convergence of the interests of the new bourgeois class relentlessly demanding freedom from old restrictions for expansion of the economic and commercial activities and the need of the strong and powerful state engaged in the ceaseless struggles for assertion and consolidation of its authority within and without. From the common man's point of view, it is important to note that the landed aristocracy, feudal powers and priestly class were no longer in a position to control and dictate the life of the man as it had been earlier. As consciousness of ideas and concepts about the state, political power, human equality, freedom and rights grew, political monolithism too came under attack paving the way for the regulations upon the unrestrained exercise of the political power and a commitment to the respect to the rights and dignity of man.

Though, a common standard of human rights for all the people irrespective of any discrimination was first adopted by the UN General Assembly on 10 Dec 1948 the Universal Declaration of Human Rights against the backdrop of the massive destruction of the IInd World War, its roots lie much beneath and it has a long history of struggle for its acceptance. As the concrete shape of the human rights movements has been shaped by the distinct socio-political milieu at different times, there are discernible features in its evolutionary course. Identifying these trends, the Czech jurist Karel Vasak (1977) categorised these rights into three generations which again may be traced to the three worldwide ideals of liberty, equality and justice expounded by the French Revolution in 1789. These are civil-political rights, socio-economic rights and collective-developmental rights.

First Generation of Rights

The first among these, the movements for civil-political rights with emphasis on individuals' rights and their participation in political life emerged in 17th and 18th century though these can be traced back to the Magna Carta in 1215. They are negative in character in so far

as they have been created to protect individuals from the arbitrary exercise of state power. These rights may be divided into two groups:

- i) Those meant for the security of physical and civil rights such as protection from torture, slavery, arbitrary arrest, free and fair trial etc. and,
- ii) Those to ensure civil-political liberties like freedom of assembly and association, freedom of religion and conscience, freedom of thought and expression etc.

Classical developments in this category of rights are the Magna Carta (1215), the Petition of Rights (1628), the Bills of Rights (1689), the American Declaration of Independence (1776) and the French Declaration of Human and Citizens Rights (1789). These documents helped gave a new identity to certain claims of the man bringing the exercise of the ultimate coercive power under restraints. It came to question the rationale of the checked the wilful and arbitrary imposition of taxes by the ruling royal power and put pressure to make approval of the

Parliament mandatory. These sought to firmly establish definite judicial procedures to detain and confiscate. Democratic rights such as the freedoms of speech, thought, the right to petition gained currency and recognition. A new orientation to the principles of individualism rapidly gained due importance particularly by the French Declaration of Human and Citizen Rights in 1789 which proclaimed that "the purpose of each political associations is keeping natural and indefeasible human rights." In period after the IInd World War, the dictates of this class of the rights were enshrined at the global level and given recognition by Article 3 to 21 by the Universal Declaration of Human Rights in 1948 and later consolidated through International Covenant on Civil and Political Rights in 1966. The European Convention on Human Rights too trusted the wisdom of the man by making human being as the nucleus of the exercise of the legitimate power in 1953.

Second Generation of Rights

These rights may be viewed as wider projection of the French Revolution's ideal of "Equality". The value to the principle of the man was further eulogized by the philosophical underpinnings of the communist ideologies and its representative countries of the East Europe led by the Soviet Union. The struggle for a non-discriminatory and egalitarian human society stood just opposed to the Western World's focus on civil-political rights, a naturally corollary of the ideal of liberty. These rights owe their origin to the realization that primacy of the civil and political rights little relevance and meaning for the persons belonging to the socially,

educationally and economically under-privileged and disadvantaged sections and pivot around the principles of social justice and public obligations to demand equal conditions and treatment making it a positive concept.

The distinctive feature of this class of rights is that these do not exist as direct possession by the individuals but come to them by virtue of the certain positive and affirmative dutiful actions the public authorities. Two categories of these rights can be identified:

- i) First, belonging to the social needs like education, nutrition, healthcare etc; and,
- ii) Second, related with the economic needs such as fair wages, living standard, social security etc.

Like the first generation of rights, they were covered by the 1948 UDHR and later by the 1966 International Covenant on Economic, Social and Cultural Rights.

Third Generation of Rights

The rights of this category, also known as the 'solidarity' rights are the most recently recognised category of human rights (in Vasak's Scheme of Human Rights) and also most complicated and contested.

Rights in this category include self-determination as well as a host of normative expressions such as the right to development, the right to peace, the right to a healthy environment, and the right to inter-generational equity. This class of human rights reflects the French Revolution's ideal of "fraternity" and is different from the first and second generations of rights in as much as these are not the outcome of any ideological moorings like liberalism or socialism as in the case of earlier two

generations but their evolution has taken place against the problems of the real life and practical experiences. The origin of this group of rights can be traced to the western model of development pursued after the Industrial Revolution. Consequently, instead of taking a narrow monistic-atomistic conception of the man, it envisions man as a universal citizen and recognises the importance of the empowerment of social groups and a balanced and harmonious relationship between man and nature. It is for this reason that they are variously known as the “group rights” or “green rights” or “collective-developmental” or “unity” rights of the peoples and groups. Further, their existence does not depend upon any single condensed International Charter as is the case with the previous generations but is found in several documents advancing aspirational “soft laws” such as Stockholm Declaration of the UN Conference on Human Environment in 1972, Rio Declaration on Environment and Development in 1992 and UN declaration on the Rights of the Indigenous Peoples in 2007. Some of the most cherished rights in this category are concerned with safe and healthy environment, peace, human common wealth, cultural heritage, natural resources, development, communication and philanthropic assistance.

Critical Appraisal

The theory of the three generations of rights has been criticised on account of a number of grounds. To begin with, the time frame for the theory is unclear. It is argued that Vasak based his theory on a 30 year frame in a post-1945 framing but, after two years, he modified the theory and linked it with the French Revolution’s three concepts of liberty, equality and fraternity, thus backdating it another 150 years. Besides the very concept of right invariably involves duty of someone to respect that right and it is on this ground that scholars like Maurice Cranston argue that second and third generation rights cannot be termed truly as rights since, due to scarcity, the governments are not duty bound to ensure them. It is also alleged that the focus on equality based rights culminates into the subordination of the initial civil rights to the ever expanding government which would fail to deliver. There is also an issue of incompatibility as presented by the traditional political theory. It is argued that the values of

liberty and fraternity are inherently antagonistic and therefore, collective-developmental rights are not compatible with the preceding generations.

But, on the other hand, progressive scholars assert that the three generations are deeply interdependent and therefore, no single generation can be emphasized to the exclusion of others. the alleged incompatibility between the three generations of rights, Rejecting the alleged incompatibility between the three generations of rights, Twiss says that any exclusive focus on civil-political rights at the cost of the socio-economic and collective-developmental rights may lead to creating socially disadvantaged groups, triggering disruption and consequent repression jeopardizing the civil – political rights. Likewise, exclusive focus on socio-economic rights to the exclusion of the first generation rights may lead to a situation where the absence of the feedback of political participation would hamper the advancement of socio-economic welfare itself. Again, exclusive reliance on the collective-developmental rights at the altar of the complete neglect of other rights runs the risk of

not only fomenting a backlash against the civil political repression but also of undercutting the equitable distribution of socio-economic goods necessary for continuing solidarity of the society. The Vienna Conference on Human Rights in 1993 appreciated the integrated nature of the human rights very well and emphasised that all human rights are of equal importance putting an end to end the Cold War era's rhetoric of the qualitative division between civil and political rights on the one hand and economic, social and cultural rights on the other. It further pronounced that "all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of

national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms." It is for this reason that notwithstanding the criticisms, the classification provided by Karel Vasak is accepted as probably the most practical, commonly used, and comprehensive categorization of human rights. Even the critics of the Vasak's theory have admitted the practical existence of separate groups characterized by specific features. Donnelly, for example, recognizes the that each of the three groups of human rights is patronized by one of the three blocks during the Cold War: the Western world's focus on the civil and political rights; the Eastern bloc's push for economic, social, and cultural rights agenda; and the Third World championing the importance of group and solidarity rights.

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7. The Peace of Westphalia is the collective name for two peace treaties signed in
October 1648 in the Westphalian cities of Osnabruck and Munster. See, <https://courses.lumenlearning.com/suny-hccc-worldhistory/chapter/the-peace-of-westphalia-and-sovereignty/>; also see for origins of sovereignty
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1979, he used the term as early as Nov 1977. See, Vasak, Karel (Nov 1977), Human
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11. It was also the subject of attention for regulators of Universal Declaration of
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the USA too, the President Franklin D Roosevelt had himself proposed a Second Bill of
Rights covering much the same grounds in his State of the Union Address in Jan.
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13. Twiss, Sumner B. (March 2004) , History, Human Rights, and Globalization, Journal
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14. Kiss, A & D Shelton (2004), International Environmental Law. Transnational
Publishers Ardsley, NY, p. 12ff.
15. For instance, before the present age, man didn't have any environmental problem;
but today, it has emerged into a serious problem.
16. See for Third Generation of Human Rights, P.H. Kooijmans, Human Rights –
Universal Panacea? Some reflections on the so-called human rights of the third
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315-329; published online by Cambridge University Press, 21 May, 2009, DOI: <https://doi.org/10.1017/S0165070X00006781>
17. Soft laws are quasi judicial instruments as either they are not legally binding or
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