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Theoretical Foundation of International Human Rights

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Abstract:

This article delves into the theoretical foundations of international human rights, exploring various approaches that have shaped our understanding of these rights. The Natural Law Approach emphasizes inherent equality but relies on methods open to interpretation. The Historical Approach considers cultural influence but risks neglecting individual rights. The Positivist Approach sees law as sovereign-made but lacks a connection to people's will. The Marxist Approach envisions human rights in classless societies. The Social Science Approach analyses rights within social processes but lacks clear legal connections.

The article also discusses the evolution of human rights theories, from natural law to John Locke's influence on America's Bill of Rights. It categorizes human rights into natural, moral, fundamental, legal, civil and political, and social rights. Two overarching perspectives, the philosophical and pragmatic approaches, provide insight into the nature and application of these rights.

In conclusion, this article underscores the essential role of human rights in society, emphasizing their contribution to prosperity, individual dignity, and moral principles. While acknowledging the importance of human rights, it also highlights the need for responsible use and protection of these rights in the context of law and necessity.

Introduction:

The concept of international human rights is a cornerstone of modern society, but its theoretical foundations are diverse and complex. This article aims to explore the rich tapestry of approaches that have contributed to our understanding of human rights, shedding light on their philosophical origins, historical evolution, and pragmatic application.

One prominent approach, the Natural Law Approach, roots human rights in an inherent, higher law, emphasizing equality. Yet, it relies on methods like divine revelation, leaving room for interpretation. The Historical Approach recognizes cultural influences on human rights but may

side-line individual rights in favour of collective values. The Positivist Approach, viewing law as sovereign-made, raises concern about rights' alignment with the people's will. The Marxist Approach envisions human rights within classless societies, while the Social Science Approach analyses rights within broader social contexts.

The historical evolution of these theories, from natural law to John Locke's influential ideas on individual rights, has shaped the foundation of contemporary human rights. These rights encompass various categories, including natural, moral, fundamental, legal, civil and political, and social rights, each playing a unique role in society.

Two overarching perspectives, the philosophical and pragmatic approaches, offer lenses through which to examine human rights. Philosophically, human rights are seen as inherent, unassailable, and essential, promoting equality and individual dignity. The pragmatic approach, on the other hand, acknowledges the real-world complexities of implementing and safeguarding these rights through international treaties and agreements.

In conclusion, this article asserts the indispensability of human rights in fostering societal development, safeguarding freedom, and enhancing moral principles. However, it also highlights the need for responsible exercise and protection of these rights within the bounds of the law and the exigencies of necessity. Ultimately, human rights represent a crucial instrument for a better civilization, deserving respect from all generations.

Approaches to Human Rights

The Natural Law Approach is based on a natural law that is higher than positive law, which is man-made law, and to which it must adhere. Equality is at the heart of natural law. However, since it makes use of methods like participation in natural reason, transcendental cognition, and the revelation of divine will, none of its claims can be definitively confirmed or rejected.

The Historical Approach

This approach considers human rights to be influenced by culture, environment, and space and time. However, there are three distinct disadvantages. First, it occasionally disregards the individual as a separate entity from the community. Second, it gives language, religion, and other aspects more weight than the actual viewpoints of individuals. Thirdly, it undermines the universality of human rights by focusing on social differences.

The positivist approach

It views law as enacted by a sovereign with authority and derived from coercion. The main drawback is that laws would not be based on the people's will but on the sovereign's. If punishment came from laws rooted in society's values rather than from force, obedience would be easier to achieve. Positivism also holds that international law applies only to nations and not to individuals, rendering a number of current instruments useless.

Positive law developed and legislation became the primary source of human rights following the decline of the natural law conception of human rights. Austin and Bentham are the most well-known authors in this regard. Human rights can be given, taken away, and modified by a society to meet its needs under positive law instead of being absolute. The essence of the positivist viewpoint is summed up by Jeremy Bentham as follows: Law is a child of right; Real rights are derived from real laws, whereas natural rights are derived from imaginary laws, or "laws of nature." [16]

The Marxist Approach

It is based on Karl Marx's writings about the industrial revolution of the 19th century. It asserts that human rights are non-existent in capitalist societies. They are only possible in a society with no classes and public ownership of production tools. Another flaw of this strategy is that it views the growth of human rights in a communist society as unavoidable and unproblematic.

The Social Science Approach:

This method emphasizes the community's role in shaping principles and situates human rights within broader social processes. To estimate the degree to which human rights have been successful or unsuccessful, it employs models, scientific and empirical techniques, and methods. However, it fails to clearly connect social processes and the law.

The concept of positive law laid the groundwork for the subsequent fundamental human rights philosophy. Natural law, according to Thomas Hobbes (1588–1679), is too ambiguous, hollow, and subject to wide interpretations. Human rights thought has often been credited to John Locke as its founding father. He asserted that every man was entitled to property, liberty, and life. The concept of rational, equal men and God's natural rights served as the foundation for these ideas. Governments that repeatedly violated these rights lost their legitimacy and became tyrannies.

The revolutionary movements of the subsequent century were fueled by Lockean principles. In America, natural rights were widely accepted. The English rule was viewed by the Americans as tyranny that had lost its legitimacy as a result of violating their rights. It is undeniable that all men (sic) are created equal, and as a result, they have the right to life, liberty, and the pursuit of happiness, as stated in the American Declaration of Independence. These rights are defended in the Bill of Rights, a set of amendments to the US constitution, by citing natural rights based on God's rights.

The decline in the power of the church during the middle ages and, later, the Renaissance caused society to place a greater emphasis on the individual. This led to a shift away from feudal and monarchist societies and allowed for the flourishing of individual expression.

Further,

Human rights fall into the categories of:

- Rights that humans are born with are known as natural rights.
- Rights that deal with laws that are fair and just are called moral rights.
- Rights that are fundamental and essential to human well-being are referred to as fundamental rights.
- Legal rights are those guaranteed by the law.
- Rights established by the government for the purpose of fostering a nation's economic growth are known as civil and political rights.
- Rights that help to eliminate social inequality are known as social rights.

The concept of human rights can be understood in two ways:

- The pragmatic approach □ The philosophical approach.

Philosophical Approach to the Theory of Natural Rights As the name suggests, natural rights are rights that are conferred upon a person at the time of their birth. Nature was created by humans. Natural rights are unavoidable, inherent, and unassailable. It is a natural right that every man has, regardless of his gender, caste, race, or religion. The most common legal idea (Website-lexscriptamagazine.com) 6 (Email-riday.riday.r662@gmail.com)

is that all men are equal before the law and that no one can be treated unfairly in any circumstance. This right makes that idea a reality. This theory was promoted by John Locke, who asserted that natural rights are gifts to humans that the state cannot take away or abolish. Additionally, he held the belief that humans are capable of conscious decision-making. Anywhere, such rights can be asserted. Any form of discrimination or oppression is a direct violation of human rights.

The Social Expediency Theory is another name for the Social Welfare Theory of Social Rights. Bentham and Mill, two proponents of a utilitarian system, are firm believers in the idea of "the greatest happiness of the greatest number." A state's obligation to take social measures is based on this principle. Reason and experience can be used to determine the utility. The rules, traditions, and laws ought to be socially desirable. Reason and experience determined the significance of utility in these customary laws. Because it holds that giving up one's rights for the good of others is a good deed, social theory is seen as a necessary component in the fight against social injustice.

Natural rights theory is at odds with this theory of legal rights. When it is acknowledged by the state, a legal right exists. A right can only be enforced by the state once it recognizes its existence. To safeguard the public's interests, the state must enforce these rights. The premise of this theory is that humans themselves are not a better regulator of human rights than the state. Due to its acceptance of only state-created rights and disregard for natural rights, this theory was widely criticized. This theory was supported by Austin and Jeremy Bentham. However, rights cannot be restricted solely by the state, as this could result in tyranny of the law. It is impossible to ignore a reference to ancient norms and laws.

Theory of Historical Rights Tradition and custom are held in high regard in history. What follows as "change" in society cannot ignore the long-standing, unbroken custom that has been followed to this day. These rights may have their origins in individual rights. Under the guise of rituals and customs, historical rights are handed down from one generation to the next. All adhere to these rights consistently for a very long time.

Theory of Economic Rights This theory emphasizes not only how a country works but also how it is structured. Karl Marx, the proponent of this theory, defends economic theory on the
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basis that the State is an agency that possesses the power to direct a society's interests and protect its citizens' rights. This theory is important because it influences how people's legal obligations are based on how economic power is distributed. The political structure is solidly supported by the economic structure. He is of the opinion that for rights to flourish, a classless society in which everyone is treated equally and rights are not exploited is necessary.

The pragmatic approach is rather straightforward and makes reference to a number of institutions that add or change the fundamental theories of human rights. The aforementioned theories are the basis for all of these restrictions, laws, and regulations. Treaties like the International Covenant and the Universal

Declaration of Human Rights exist all over the world. We have the African Charter on Human and People's Rights, the American Convention of Human Rights, the European Social Charter, the American Declaration of the Rights and Duties of Man, and the European Convention on Human Rights and Fundamental Freedoms. Treaties that only address a single human right or a very small number of human rights are referred to as subsidiary treaties. The parties to these treaties are obligated in greater detail and with greater specificity. When a violation of a human right occurs, complex situations necessitate such a strategy.

Conclusion

While some may subscribe to the theory and others may not, it is essential to keep in mind that these rights originated with humans. Right, are necessary for a society's development. A country's various rights lead to a variety of situations that contribute to its roots' wealth and economic efficiency. Human freedom and moral rights are safeguarded by rights. The existence of such rights significantly elevates both dignity and standard of living. The aforementioned distinct theories shed light on a variety of activities that depend on these rights. It helps us comprehend the significance of the legal system, the constitution, and the potent instrument that humans possess to safeguard their interests. Protecting this idea for the sake of a better civilization requires respect from the current generation.

As a result, it is clear from the preceding discussion that human rights are essential and beneficial to every individual worldwide—not only as a means of combating discrimination (Website-lexscriptamagazine.com) 8 (Email-riday.riday.r662@gmail.com)

but also as a means of ensuring individual justice with the support of the law. However, this does not mean that individuals will violate human rights or use them for any purpose that is detrimental to the well-being of any state or location, which may result in the various exceptions that are made based on necessity. When viewed from the perspective of Rabindranath Tagore, these rights to freedom are as essential as a fearless mind backed up by law, which is so necessary in today's world. Overall, the Human Rights are important and cannot be avoided.

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