



AN EXAMINATION OF THE GENERATION OF HUMAN RIGHTS

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ABSTRACT

This study is carried out to examine the generation of human rights. It's meaning, nature and major focus, using a doctrinal research method which involves primary and secondary sources. Primary source employed include local legislation, cases in law report, international instrument and policy statement on the subject matter. Secondary sources are text books, articles in reputable national and international journals and publication. Having traced back to the evolutionary nature and content of human rights by Karel vasak, Czech Jurist and others. It is established that human rights regime have expanded and will continue to expand with contribution of mankind. Thus, it has metamorphosed from the state where the rights were exclusively attributed to nature to the present state where all authorities have seen that there is no option than to surrender their dictatorial excessiveness to the principle that emanate from the natural positive law. Hence, man has seen the need to properly protect his and his neighbors right. Thus, this revolutionary process culminated into first, second and third generation. The first generation is based on the principle of individualism and noninterference while the second generation deals with how people live and work together and the basic necessities of life and lastly is the third generation which is also known as the solidarity rights. This research shall adopt the doctrinal approach of research methodology, as the research will be making use of textbooks, legislations, case laws, journals and other sources relevant to the research topic.

Keywords: Human Rights, International Law, Regulations.

1. INTRODUCTION

It's been over four decades since Karel Vasak introduced the three generations of human rights. His theory, not without criticism, has aided scholars to better organize the human rights discourse, which has emerged as a generational debate post World War II. From history, humankind has been firmly associated with the struggle against injustice, exploitation and disdain. In ancient times, the balance between the individual (citizen) and state was clearly in favor of the state. Individual rights were subordinated to the interest of the "fortress" (state). This was the situation for the people who enjoy the status of citizen. For all other social classes or foreigners (barbarians), the situation was much more dramatic. Personal safety and private property were at the arbitrary disposal of the sovereign who had absolute rights without limits, the right to life and death over their subjects. This period generally is characterized by the existence of the right to force itself and not the force of law. Under these conditions, individual rights were at the discretion of the ruling class or absolute monarch who could do no wrong.

By the turn of the 17th century, closely associated with the renaissance, philosophers like Plato, Aristotle and Roman philosopher Cicero advocated the natural law theory that "every human being is born with certain inalienable rights which is inherent to them by virtue of being humans". Before this, the only existing framework for the recognition of human rights was the Hammurabi's Codes, instituted by the Babylonian King, Hammurabi. This code contained a set of laws for the protection of the earliest recognized rights to property (property rights), fair wages and proof of ownership rights by adjudication.

Through the European wars of religion and the English civil wars of the 17th century, the ideals of liberalism and natural rights became the central concern of European culture during the 18th century, the age of Enlightenment. Most notably, John Locke developed the theory of natural rights, first contended by the philosophers of the classical era- Plato, Aristotle and Cicero- that people are naturally free and equal. Lockean philosophy of natural rights did not rely on citizenship or any state law, nor were they limited to any ethnic, cultural, or religious group. Locke believed that natural rights were derived from divinity since humans are creations of God. Around the same time, and largely influenced by the writings of Locke, the English Bill of 1689 was enacted.

2. EVOLUTION OF HUMAN RIGHTS

Human rights are relevant to all of us, not just those who face repression or mistreatment. They protect our basic freedoms and liberties. It is generally agreed that without human rights, human beings are not humans. With the benefit of hindsight, the relevance of human rights to civil society is no longer a subject of debate. The atrocities of the Second World War made the protection of human rights an international priority. It is notable that the United Nations was founded on September 2, 1945, exactly 52 days after the end of World War II, with the mandate to maintain the peace of the world and its first call was to proclaim a

Universal Declaration of Human Rights'. By virtue of this, it is arguable that human rights are the pillars on which the peace of the world rest.

Equality and Human Rights Commission gave the meaning of 'Human Rights' as follows "Human rights are the basic rights and freedoms that belong to every person in the world, from birth until death. They apply regardless of where you are from, what you believe or how you choose to live your life. These basic rights are based on shared values like dignity, fairness, equality, respect and independence". As defined by the United Nations Human Rights Office of the High Commissioner (OHCHR), human rights are rights we have simply because we exist as human beings — they are not granted by any state. These universal rights are inherent to us all, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status. They range from the most fundamental - the right to life - to those that make life worth living, such as the rights to food, education, work, health, and liberty.

Judging from the definitions of the relevant stakeholders above, it is apparent that human rights are not given, but inherent. They are also shared by every human being, regardless of nationality, sex or social status. By this definition, the point is clear that for an assumed right to be regarded as a human rights, such a right must be universal to all humans, and not peculiar in nature. The significance of this understanding lies in the reality of modern trends where persons of similar interests group themselves into a movement for the purpose of elevating their peculiar interest to the status of human rights. As defined above, what can qualify for human rights must be a right shared with other members of the human community. A right that originated from membership of an association and whose relevance remains within the operation of such an association, does not qualify as a human right.

3. CLASSIFICATION OF HUMAN RIGHTS

It is important to mention from the outset that human rights are equal and relevant no matter the particular interest they protect. The right to life is not more important than the right to move freely from place to place because a living person without geospatial movement is no better than a tree. Why human rights are classified into categories is for purely academic purposes like to identify the interest a set of rights protect, or to explain the level of interference with the particular set of rights which is permitted by law. In this section, the study will explain concepts like natural rights, fundamental rights, civil rights, political rights, economic rights, absolute rights and qualified rights.

Natural rights are those that are not dependent on the laws or customs of any particular culture or government, and so are universal, fundamental and inalienable (they cannot be repealed by human laws, though one can forfeit their enjoyment through one's actions, such as by violating someone else's rights) . The idea of human rights derives from theories of natural rights .

Natural law first appeared in ancient Greek philosophy and was referred to by Roman philosopher Cicero. It then developed in the Middle Ages by Catholic philosophers such as Albert the Great and his pupil Thomas Aquinas. During the Age of Enlightenment, the concept of natural laws was used to challenge the divine right of kings, and became an alternative justification for the establishment of a social contract, positive law, and government in the form of classical republicanism .

Writing on the natural law theory of natural rights, Locke stated that “all individuals are equal in the sense that they are born with certain inalienable natural rights. That is, rights that are God-given and can never be taken or even given away. Among these fundamental natural rights, Locke said, are life, liberty, and property” . Locke believed that the most basic human law of nature is the preservation of mankind. He argued that individuals should be free to make choices about how to conduct their own lives as long as they do not interfere with the liberty of others. Locke therefore believed liberty should be far-reaching. The purpose of government, Locke wrote, is to secure and protect the God-given inalienable natural rights of the people. For their part, the people must obey the laws of their rulers.

Fundamental rights are a group of rights that have been recognized by the state as requiring a high degree of protection from encroachment. These rights are specifically identified in a Constitution, or have been found under Due Process of Law (pronouncement of courts). . Laws encroaching on a fundamental right generally must pass strict scrutiny to be upheld as constitutional. Examples of fundamental rights are the right to life, freedom of expression, right to dignity of human person, right to privacy, etc. Fundamental rights are also called Constitutional rights. These are rights that are so essential to human existence that they are statutorily protected. Rights in the constitution are enforceable in accordance with the provisions of the constitution, unlike general human rights, some of which are not justiciable and constitute mere aspirations of the citizens . In *Ransome Kuti & ors. v AG Federation* , Oputa, JSC emphasized that:

Not every civil or legal right is a fundamental right. The idea and concept of fundamental rights both derive from the premise of the inalienable rights of man — life, liberty and the pursuit of happiness. Emergent nations with written constitutions have enshrined in such constitutions some of these basic human rights. Each right that is thus considered fundamental is clearly spelt out.

A major distinction between human rights and constitutional rights relates to their divergent jurisprudential evolution. Human rights were propounded by natural law jurisprudence while constitutional rights have their origins in concepts of positive law, which accords preeminence to the laws made by the state. Successive constitutions of Nigeria since independence in 1960 have continued to include provisions on human rights protections. This commitment to human rights has been attributed to the historical emergence of the Nigerian nation. One of the British

legacies in the Commonwealth is the libertarian tradition of the common law and its system of justice as embodied in the Magna Carta of 1215 and the Bill of Rights of 1689.

Civil and political rights are a class of rights that protect individuals' freedom from infringement by governments, social organizations, and private individuals. They ensure one's entitlement to participate in the civil and political life of society and the state without discrimination or repression. Civil rights include the ensuring of peoples' physical and mental integrity, life, and safety; protection from discrimination on grounds such as sex, race, sexual orientation, gender identity, and individual rights such as privacy and the freedom of thought, speech, religion, press, assembly, and movement.

Political rights include natural justice (procedural fairness) in law, such as the rights of the accused, including the right to a fair trial; due process: the right to seek redress or a legal remedy; and rights of participation in civil society and politics such as freedom of association, the right to assemble, the right to petition, the right of self-defense, and the right to vote. Civil and political rights form the original and main part of international human rights. They comprise the first portion of the 1948 Universal Declaration of Human Rights (with economic, social, and cultural rights comprising the second portion) . The theory of three generations of human rights considers this group of rights to be "first-generation rights", and the theory of negative and positive rights considers them to be generally negative rights .

Questions about civil and political rights have frequently emerged. For example, to what extent should the government intervene to protect individuals from infringement on their rights by other individuals, or from corporations e.g., in what way should employment discrimination in the private sector be dealt with? These questions have led to the idea of political theory- the philosophical study of government, addressing questions like what makes a government legitimate, what rights and freedoms it should protect, what form it should take, what the law is, and what duties citizens owe to a legitimate government, if any, and when it may be legitimately overthrown, if ever.

The basic argument of political theorists is that government is a product of social contract formed by the pool of citizen's right. Hence, the primary duty of government is to protect the citizen's rights and ensure the freedoms which accrue to citizenship. That government should only interfere with a citizen's right for either the protection of collective interests or the protection of the rights of another citizen. The argument is that human rights are sacrosanct, but would be qualified in the interest of the state or the interest of another citizen. The counteracting argument is that certain rights, like the right to life, should remain absolute since the state cannot restore it if it is discovered that it has been wrongly interfered with.

Not all rights are written in the same way. Some rights are absolute, in particular the right to life and the right not to be subjected to torture or to inhuman or degrading treatment or punishment. In other words, there are no circumstances when a public authority is entitled to subject someone to inhuman or degrading treatment. Some rights can be limited, for example there are certain defined limited circumstances when you can legitimately be deprived of your right to liberty.

Some human rights are qualified, which means they can be restricted in some circumstances and within limits. These rights are written so that the first part of the Article sets out the right that is to be protected, while the second part establishes whether a public authority can legitimately restrict that right in order to protect the wider public interest.

Economic and social rights are human rights that relate to our ability to live in dignity and participate fully in our society. They include rights related to the workplace, social security, and access to housing, food, water, health care and education. They include the right to fair wages and equal pay; the right to adequate protection of income in the event of unemployment, sickness or old age; and the right to an adequate standard of living.

Economic, social and cultural rights are recognised and protected in International and regional human rights instruments. Member states have a legal obligation to respect, protect and fulfil economic, social and cultural rights and are expected to take “progressive action” towards their fulfilment. The Universal Declaration on Human Rights recognizes a number of economics, Social and Cultural Rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) is the primary international legal source of economic, social and cultural rights.

Environmental Rights are the protection of natural resources; the access to and use of natural resources; and how the access to and use of these resources affects surrounding populations, as well as the resources themselves . Environmental rights are an extension of the basic human rights that mankind requires and deserves. In addition to having the right to food, clean water, suitable shelter, and education, having a safe and sustainable environment is paramount as all other rights are dependent upon it. The desire to ensure access for all of Earth’s inhabitants to this essential standard of living is the primary concern of Environmental rights

Beyond equal distribution and access to clean and sustainable resources, Environmental Rights also include an additional obligation from those in the industrialized nations. It requires us to act responsibly in our own use of natural resources, and to regulate our levels of consumption in a more equitable manner. Due to the “modern world’s” value on material goods, most of the world inhabitants lack these basic human and environmental rights.

From the definitions given in section 2.2 of this study, certain features are apparent which determine whether an interest qualifies as a human right.

Some of these are that human rights are inherent, inalienable, universal, equal and non-discretionary.

Human rights are inherent and irrevocable. They cannot be taken away by any power or authority because these rights originate with the social nature of man in the society of human beings and they belong to a person simply because he is a human being. As such human rights have similarities to moral rights.

The principle of universality of human rights is the cornerstone of international human rights law. This means that we are all equally entitled to our human rights. This principle, as first emphasized in the UDHR, is repeated in many international human rights conventions, declarations, and resolutions. Human rights are inalienable. They should not be taken away, except in specific situations and according to due process. For example, the right to liberty may be restricted if a person is found guilty of a crime by a court of law.

The human rights are indivisible and interdependent. This means that one set of rights cannot be enjoyed fully without the other. For example, making progress in civil and political rights makes it easier to exercise economic, social and cultural rights. Similarly, violating economic, social and cultural rights can negatively affect many other rights.

Non-discrimination cuts across all international human rights law. This principle is present in all major human rights treaties. It also provides the central theme of 2 core instruments: the International Convention on the Elimination of All Forms of Racial Discrimination, and the Convention on the Elimination of All Forms of Discrimination against Women.

Human life has a purpose. The term “human right” is applied to those conditions which are essential for the fulfillment of this purpose. No government has the power to curtail or take away the rights which are sacrosanct, inviolable and immutable.

Human rights are not static, they are dynamic. Human rights go on expanding with socio-eco-cultural and political developments within the State. Judges have to interpret laws in such ways as are in tune with the changed social values. For eg. The right to be cared for in sickness has now been extended to include free medical treatment in public hospitals under the Public Health Scheme, free medical examinations in schools, and the provisions for especially equipped schools for the physically handicapped.

Human rights imply that every individual has legitimate claims upon his or her society for certain freedom and benefits. So human rights limit the state’s power. These may be in the form of negative restrictions, on the powers of the State, from violating the inalienable freedoms of the individuals, or in the nature of demands on the State, i.e. positive obligations of the State. For eg. Six freedoms that are enumerated under the right to liberty forbid the State from interfering with the individual.

4. LEGAL AND INSTITUTIONAL FRAMEWORK

Protection encompasses all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (human rights, humanitarian and refugee laws), without discrimination of any kind. These include laws, norms and Institutions established to continuously develop and monitor compliance with standards of human rights.

In the post-World War II period, international consensus crystallized around the need to identify the individual rights and liberties which all governments should respect, and to establish mechanisms for both promoting States' adherence to their human rights obligations and for addressing serious breaches. Thus, in the decade following the war, national governments cooperated in the establishment of the United Nations (UN), the Organization of American States (OAS), the Council of Europe (COE), African Union (AU), and the Economic Community of West African States (ECOWAS), each including among its purposes the advancement of human rights.

These intergovernmental organizations then prepared non-binding declarations or binding treaties which spelled out the specific liberties understood to be human rights, including the Universal Declaration of Human Rights, American Declaration of the Rights and Duties of Man, and the European Convention for the Protection of Human Rights and Fundamental Freedoms. By the end of the 1950s, these three systems (United Nations, Inter-American and European) had each established mechanisms for the promotion and protection of human rights, which included the (former) UN Commission on Human Rights, the Inter-American Commission on Human Rights, the (former) European Commission of Human Rights, and the European Court of Human Rights.

More recently, other intergovernmental organizations have also established, or begun to establish, regional human rights treaties and monitoring mechanisms. In Africa, the African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights monitor State compliance with the African Charter on Human and Peoples' Rights. The decline of the Soviet Union spurred the formation of the Organization for Security and Co-operation in Europe (OSCE) which recognized dialogue on human rights, political and military relations, and economic development as being equally important to sustained peace and stability across Europe and the (former) Soviet States. In Southeast Asia, the Association of Southeast Asian Nations (ASEAN) has recently created the ASEAN Intergovernmental Commission on Human Rights, and the League of Arab States in 2009 created the Arab Human Rights Committee. The subsequent segments of this paper presented the provisions of selected International, regional and national legal frameworks on human rights, like the Universal Declaration on Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights, and Chapter II and IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The Universal Declaration of Human Rights (UDHR) is an international document adopted by the United Nations General Assembly that enshrines the rights and freedoms of all human beings. It was accepted by the General Assembly as Resolution 217 during its third session on 10 December 1948 at the Palais de Chaillot in Paris, France . The Declaration of 30 articles detailing an individuals basic rights and fundamental freedoms and affirming their universal character as inherent, inalienable, and applicable to all human beings .

The International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by United Nations General Assembly Resolution 2200A (XXI) on 16 December 1966, and in force from 23 March 1976 in accordance with Article 49 of the covenant. Article 49 allowed that the covenant would enter into force three months after the date of the deposit of the thirty-fifth instrument of ratification or accession. The covenant commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial .

The ICCPR is monitored by the United Nations Human Rights Committee (a separate body to the United Nations Human Rights Council), which reviews regular reports of States parties on how the rights are being implemented. States must report initially one year after acceding to the Convent and then whenever the Committee request (usually every four years).

5. EXAMINING THE THREE GENERATIONS OF HUMAN RIGHTS

The first generation of human rights are based on the principles of individualism and noninterference. They tend to be negative rights based on the Anglo-American principles of liberty. This first generation of rights developed under a strong mistrust of government and has since evolved into what are now known as civil or political rights. Important examples of first generation rights include the right to life, right to own property, equality before the law, presumption of innocence, right to privacy, freedom to move and reside anywhere in one's country, right to seek asylum internationally, freedom of speech, freedom to belong to any religion, right to peaceful assembly, freedom from arbitrary arrest, torture, forced exile.

These rights began to emerge as a theory during the seventeenth and eighteenth centuries and were based mostly on political concerns. It had begun to be recognized that there were certain things that the all-powerful rulers should not be able to do and that people should have some influence over the policies that affected them. The two central ideas were those of personal liberty, and of protecting the individual against violations by the state.

Civil and political rights today are set out in detail in the International Covenant on Civil and Political Rights (ICCPR) and in the European

Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and they include rights such as the right to participate in government and the prohibition of torture. These rights have traditionally been regarded by many — at least in the West — as the most important human rights. This belief in the primacy of political rights is purely a product of historical circumstances. As earlier stated, the basis for Vasak's categorization of the human rights was on the regional interests that promoted the recognition of these rights.

The Westerners, with a long history of civil wars especially against political dominance and government powers, took the belief that liberty was the most important human right. During the Cold War, the countries of the Soviet block were severely criticised for their disregard of civil and political rights. This regional sentiment manifested at the discussions for world peace after the world wars. It dominates the texture of most international legal instruments, and continues to influence the scale of human rights recognition across states colonized by the Western countries. For example, Chapter IV of the Constitution of the Federal Republic of Nigeria exclusively codifies those rights traditionally recognized as civil and political rights.

The rights concern how people live and work together and the basic necessities of life. They are based on the ideas of equality and guaranteed access to essential social and economic goods, services, and opportunities. They became increasingly a subject of international recognition with the effects of early industrialisation and the rise of a working class. These led to new demands and new ideas about the meaning of a life of dignity. People realized that human dignity required more than the minimal lack of interference from the state as proposed by the civil and political rights. Social, economic and cultural rights are outlined in the International Covenant on Economic, Social and Cultural Rights (ICESCR) and also in the European Social Charter of the Council of Europe.

Social rights are those that are necessary for full participation in the life of society. . They include at least the right to education and the right to found and maintain a family but also many of the rights often regarded as 'civil' rights: for example, the rights to recreation, health care, privacy and freedom from discrimination.

Economic rights are normally thought to include the right to work, to an adequate standard of living, to housing and the right to a pension if you are old or disabled. The economic rights reflect the fact that a certain minimal level of material security is necessary for human dignity, and also the fact that, for example, a lack of meaningful employment or housing can be psychologically demeaning.

Cultural Rights refer to a community's cultural "way of life" and are often given less attention than many of the other types of rights. They include the right to participate freely in the cultural life of the community and, possibly, also the right to education. However, many other rights, not officially classed as 'cultural' will be essential for minority communities

within a society to preserve their distinctive culture: for example, the right to non-discrimination and equal protection of the law.

The list of internationally recognised human rights has not remained constant. Although none of the rights listed in the UDHR has been brought into serious question in over 60 years of its existence, new treaties and documents have clarified and further developed some of the basic concepts that were laid down in that original document . These additions have been a result of a number of factors: they have partly come about as a response to changing ideas about human dignity, and partly as a result of new threats and opportunities emerging. In the case of the specific new category of rights that have been proposed as third generation rights, these have been the consequence of a deeper understanding of the different types of obstacles that may stand in the way of realizing the first and second generation rights .

Social and economic rights had a difficult time being accepted on an equal level with civil and political rights, for reasons which are both ideological and political. Although it seems evident to the ordinary citizen that such things as a minimum standard of living, housing, and reasonable conditions of employment are all essential to human dignity, politicians have not always been so ready to acknowledge this. One reason is undoubtedly that ensuring basic social and economic rights for everyone worldwide would require a massive redistribution of resources. Politicians are well aware that that is not the type of policy that wins votes.

It is therefore suggested that second generation rights are different to first generation civil and political rights. The first claim often made is that social and economic rights are neither realistic nor realizable, at least in the short term, and that we should move towards them only gradually. This is the approach that has been taken in the ICESCR: governments only need to show that they are taking measures towards meeting these aims at some point in the future. The claim, however, is certainly open to dispute and appears to be based more on political considerations than anything else.

6. RECOMMENDATIONS

Based on the foregoing, this paper recommended as follows:

- a) Relying on the principles of *Pacta Sunt Servanda*, state parties should not renege on the agreement made internationally especially as it pertains to human rights law. Internationally recognized treaties are useful in the implementation of the various generations of human rights within the comity of nations. State parties should therefore not be hiding under the cloak of domestic ratification.
- b) Public awareness, enlightenment programmes and orientation for the masses are also needed. The masses should be educated enough on their human rights as required by some provisions of international treaty, but also on the evolution of the generations of rights.
- c) Judicial activism in human rights matters is needed to reduce the administrative and legislative weaknesses and inadequacies because of grave consequences of problems faced. The judiciary should live up to expectation. A lot of activism is needed in this area of law in the sense that good interpretation of relevant provisions in existing laws will go a long way in addressing the problems of litigants in human right justice. I

therefore recommend a liberal interpretation of the provisions of our laws as the case demands.

- d) This paper also recommended that Nigerian judges should be trained on the effect of ratification of international treaties to assume jurisdiction when dealing on human rights matters.
- e) In Nigeria for instance, notwithstanding the domestication of African Charter on Human and Peoples Rights together with the Fundamental Rights (Enforcement procedure) Rules 2009 that gave credence to the enforceability of the various generations of human rights, I also recommend that they should be expressly provided with such specific terminology in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 in order to avoid implied provisions and ambiguity in terms of interpretation. This will reduce the narrower interpretation by the conservative judges.

7. CONCLUSION

Having traced the evolutionary nature and content of human rights, it is established that human rights regime has expanded and will continue to expand with the continuation of mankind. Thus, it has metamorphosed from the state where the rights were exclusively attributed to nature to the present state where all authorities have seen that there is no option than to surrender their dictatorial excessiveness to the principles that emanate from these natural rights to form positive law. Man has seen the need for a proper safeguard of his and his neighbor's rights. Thus, this revolutionary process culminated into the first, second and third generations of rights