

The Sources of Human Rights Law Regimes

Janak Raj Acharya

Affiliation: Advocate, Nepal Bar Association. LL.M.in International Law, M.A. Anthropology, Freelance Researcher .writer has published frequent research article in journals and also awarded Best writing in law 2074 of Kanoon Journal Club.
Email add: janak.kin@gmail.com

ABSTRACT

Human rights are absolute implication is that they are basic for each individual and they are indivisible. The origin of "human rights laws" lies in the nature of the human being itself, as articulated in the entire world's major religions and moral philosophy. The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. The development of human rights law, international treaties certainly play the most obvious role and give rise to the least jurisprudential challenges. International human right laws based on the United Nations charterer encompasses Human Rights- Obligations principles of Human Rights and jus- cogens statue along with their related instruments.

Key words: Human Rights, universal Declaration of Human Rights (UDHR), Karel Vasak, Jean-Jacques Rousseau, The Right to Life, ICCPR, ICESCR, ACHR, Treaty-Based system.

1. Introduction

Human Rights are the rights that all people have by virtue of being human beings. Human Rights are derived from the inherent dignity of the humanity and are defined internationally, nationally and locally by various law-making bodies. The primary sources of Human rights are obviously the United Nations Universal Declaration of Human Rights 1948.¹ Human rights belong to everyone without discriminating against any particular race, religion, caste, creed and other such differences. They are fundamental in the sense they are crucially important and are of prime importance. Human rights are absolute implication is that they are basic for each individual and they are indivisible. It means that all forms of human rights, be it civic, economic or social are of equal importance. In simpler terms, the rights that each individual is entitled to as human beings are referred to as human rights.

¹The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. The UDHR is widely recognized as having inspired, and paved the way for, the adoption of more than seventy human rights treaties, applied today on a permanent basis at global and regional levels, all containing references to it in their preambles.

The essential characteristic to remember about human rights is that they are universal and they are entitled to each human being regardless of their nationality, race, and religion.² Any new universal human rights order, as indeed past efforts to create such an order amply demonstrate, must be based on a number of general principles to be universally acceptable and accepted as:³

Universality

Human rights standards, although rooted in many cultures, are universal. Through their universality human rights must afford protection to all of humanity, including special groups such as women, children, minorities and indigenous peoples, workers, national minorities, refugees and displaced persons, the disabled and the elderly. Whilst recognizing cultural pluralism, we must not tolerate cultural practices which derogate from universally accepted human rights, including women's rights. As human rights are of universal concern and are universal in value, the advocacy of human rights cannot be considered to be an encroachment upon national sovereignty.

Indivisibility and interdependence

Human rights - be they civil, cultural, economic, political or social rights - are individual and interdependent. For that reason, neither set of rights can be accorded priority over the other. Nor can it be argued that one set of rights is, in practice, a prerequisite for the enjoyment of others. Human rights, however, are interdependent, as can be exemplified by the fact that economic rights demand a fair distribution of resources and income, and the right to freedom from hunger and poverty. These can only be protected where people are able to exercise their civil and political rights, for example, the right of workers to organize and form unions to protect their economic rights.

Solidarity

The North-South dimension of the human rights agenda is of fundamental importance. Solidarity as understood in the Declaration on the Right to Development is "solidarity between industrialized countries and their developing partners and solidarity in every country with the most disadvantaged". The right to development is universal and inalienable. Solidarity with the people of all countries requires a community of interests and values to manage problems that respect no borders - from environmental degradation and migration, to drugs and epidemic

²Drishti IAS, "Evolution of Human Rights," Drishti IAS blog, 2020. Accessed on 21/09/2024. Available at: <https://www.drishtiias.com/blog/evolution%20of%20human%20rights>.

³ <https://www.socialistinternational.org>

diseases. All people are made less secure by the poverty and misery that exist in the world.

Integration

Human rights activities should not be treated or pursued in isolation but should be integrated into other activities, such as development cooperation, peace-keeping and other forms of conflict settlement. Careful distinction should be made however, between authentic human rights fact-finding and monitoring on the one hand, and advisory services or technical cooperation on the other. The differences between the two types of activity are fundamental and the distinction must be retained. Similarly, while peace-keeping, the exercise of "good offices" functions and conciliation efforts are of major importance, and should as far as possible reflect integrated human rights components, they cannot be seen as substitutes for human rights monitoring, nor will it be appropriate in many instances to combine responsibility for the different functions in the same entity.

Human rights are a product of a philosophical debate in oriental as well as western societies that has passion for over five thousand years of Vedic period in eastern society and two thousand years within the European societies.⁴ The emergence of human rights from the natural rights tradition did not come without opposition, as some argued that rights could only from the law of a particular society and could not come from any natural or inherent source. The essence of this debate continues today from seeds sown by previous generations of philosophers.⁵ The earliest direct precursor to human rights might be found in the notions of 'natural right' developed by classical Greek philosophers, such as Aristotle.⁶ But this concept was more fully developed by Thomas Aquinas⁷ in his *Summa Theologica*. For several

⁴European Philosophy also known as "Continental" philosophy and schools of thought prominent in the Kantian and post-Kantian European tradition. Kant's moral philosophy focuses on fairness and the value of the individual. His method rests on our ability to reason, our autonomy (i.e. our ability to give ourselves moral law and govern our own lives) and logical consistency.

⁵In Hinduism, the Creator of this world and about the nature of the world and the relationship between the creator and his creation. the four proper goals or aims of a human life are Dharma (righteousness, moral values), Artha (prosperity, economic values), Kama (pleasure, love, psychological values) and Moksha (liberation, spiritual values, and self-actualization).

⁶Aristotle was a Greek philosopher, researcher, and educator who made significant contributions to various fields, Aristotle also codified laws of pure logic and founded what is known as 'proof theory' in mathematics. He was known for his classification and organization of knowledge, aiming to understand the world as a unified whole. Aristotle's writings shaped Western philosophy and natural science for over two thousand years.

⁷Saint Thomas Aquinas is based on the belief that reason and faith are both necessary to achieve true knowledge. There is a natural order to things that can be known through

centuries Aquinas' conception held sway, there were goods or behaviors that were naturally right (or wrong) because God ordained it so.⁸ What was naturally right could be ascertained by humans by 'right reason' - thinking properly. Hugo Grotius⁹ further expanded on this notion in *De jure belli et paci*, where he propounded the immutability of what is naturally right and wrong.¹⁰ Human rights are an individual's rights and freedoms, which form the basis for the relationship between the government and the individual. Human rights law explicitly governs the relationship between a state and persons who are on its territory add/ or subject to its jurisdiction.

2. Evolution of Human Right laws and thought

The origin of "human rights laws" lies in the nature of the human being itself, as articulated in the entire world's major religions and moral philosophy, "human rights law" is a more recent phenomenon that is closely associated with the rise of the liberal democratic State. In such States, majoritarianism legitimizes legislation and the increasingly bureaucratized functioning of the executive.¹¹ However, majorities sometimes may have little regard for "numerical" minorities, such as sentenced criminals, linguistic or religious groups, non-nationals, indigenous peoples and the socially stigmatized.¹² It therefore becomes necessary to guarantee the existence and rights of numerical minorities, the vulnerable and the powerless.¹³ This is done by agreeing on the rules governing society in the form of a constitutionally entrenched and justifiable bill of rights containing basic human rights for all.¹⁴ Through this bill of rights, "human rights law" is created, becoming integral to the legal system and superior to ordinary law and executive action.¹⁵

Many cultures and traditional societies have believed in the worth every individual possesses as a human. Nevertheless, it was in early modern Europe when the idea of Human rights can be said to emerge in the form of "Natural Rights". The

reason. At the same time, revelation from God is required to know certain truths about God and morality.

⁸Andrew Heard, Human Rights: Chimeras in Sheep's Clothing? Simon Fraser University, accessed on sep.21, 2024. Available at: <https://www.sfu.ca/~aheard/intro.html>.

⁹Hugo Grotius the "father of international law," be recognized today as a "leading figure in international law", a universal standard that would incorporate all legal rules given to 'mankind' for its 'welfare' by human nature or divine ordinance.

¹⁰Ibid. 8

¹¹United Nations, "International Human Rights Law: A Short History," United Nations Chronicle, accessed on sep. 25, 2024, available at: <https://www.un.org/en/chronicle/article/international-human-rights-law-short-history>.

¹² Ibid. 8

¹³ Ibid .12

¹⁴ *Supra note. 13*

¹⁵ *Supra note. 14*

philosophers like John Locke, Thomas Hobbes, and Hugo Grotius declared some rights as natural in the sense that they were fundamental to human beings and are the very core of human nature. However, few early contributions are considered important and seen as landmarks that led to the beginning of the fairly new concept of human rights.¹⁶

Some of the major historical contributions include the Magna Carta of 1215¹⁷, the Bill of Rights of 1688, the US Declaration of Independence of 1776, and the Rights of Man and the Citizen, 1789 France¹⁸. These centuries witnessed the growth of humanitarian ethics and there were gradual attempts to introduce rights. For instance, the Congress of Vienna of 1815 tried to promote the abolishment of the slave trade which was eventually achieved by the Brussels Convention of 1890. Even when most of the contributions were championed by states for their own country and their own people, they laid the thrust of the language of rights.

Nevertheless, it was with the end of the two brutal world wars that the popularity of Universal Human Rights gathered momentum. In 1948, the United Nations adopted the Universal Declaration of Human Rights in its general assembly.¹⁹ In 1966, two major human rights documents were adopted, namely the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, both of which came into force in 1976.²⁰ Humanity, is entitled however, lie in earlier tradition and documents of many religions' ritual works and cultures. It took the catalyst of World War II to propel human rights in the global stage and emergences of human right laws into the global conscience. On December 10, 1948, the universal Declaration of Human Rights (UDHR)²¹ was adopted by the 56 members of the United Nations. The vote was unanimous, although eight nations chose to abstain.²² All rights are interdependent and indivisible. Its Preamble eloquently asserts that: [R]ecognition of the inherent dignity and of the equal and inalienable rights of all members of the

¹⁶ *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, U.N. Doc. A/49/2005.

¹⁷ The Magna Carta, a document guaranteeing English political liberties, was drafted at Runnymede, a meadow by the River Thames, and signed by King John on June 15, 1215.

¹⁸ Declaration of the Rights of Man and the Citizen (Déclaration des droits de l'homme et du citoyen, adopted August 26, 1789) is an expression of universal human rights—those rights that are true at all times and in all places—that served as one of the foundational documents of the French Revolution.

¹⁹ UN Doc. A/RES/60/251 (para 13), 3 April 2006, recommending to the Economic and Social Council to "abolish" the Commission on Human Rights on 16 June 2006.

²⁰ Supra note. 3

²¹ Supra note.2

²² *James Katabazi and Others v Secretary-General of the EAC and Attorney-General of Uganda*, Reference 1 of 2007 (East African Ct. of Justice Nov. 1, 2007).

human family is the foundation of freedom, justice, and peace in the world.²³ Human rights are inherent entitlements which belong to every person as a consequence of being human. International Human Rights (IHRL) is a set of international rules, established by treaty or custom, on the basis of which individuals and groups can expect and/or claim certain behavior or benefits from governments. International humanitarian law (IHL) and international human rights law are two distinct but complementary bodies of law. They are both concerned with the protection of life, health and dignity. IHL applies in armed conflict while human rights law applies at all times, in peace and in war.²⁴

Global level

For many centuries, there was no international human rights law regime in place. In fact, international law supported and colluded in many of the worst human rights atrocities, including the Atlantic Slave Trade and colonialism. The first international legal standards were adopted under the auspices of the International Labor Organization (ILO), which was founded in 1919 as part of the Peace Treaty of Versailles. ILO is meant to protect the rights of workers in an ever-industrializing world.²⁵ After the First World War, tentative attempts were made to establish a human rights system under the League of Nations. The core system of human rights promotion and protection under the United Nations has a dual basis: the UN Charter adopted in 1945, and a network of treaties subsequently adopted by UN members. The Charter-based system applies to all 192 UN Member States, while only those States that have ratified or acceded to particular treaties are bound to observe that part of the treaty-based (or conventional) system to which they have explicitly agreed.

I. Charter-based system

The normative basis of the UN Charter system is the Universal Declaration of Human Rights, adopted on 10 December 1948, which has given authoritative content to the vague reference to human rights in the UN Charter. This system evolved under the UN Economic and Social Council, which set up the Commission on Human Rights, as mandated by article 68 of the UN Charter. The Commission

²³*International Human Rights Law: A Short History, United Nations Chronicle*, accessed oct 5, 2024, available at: <https://www.un.org/en/chronicle/article/international-human-rights-law-short-history>.

²⁴*International Committee of the Red Cross, International Humanitarian Law and International Human Rights Law*, accessed sep14, 2024, available at: <https://www.icrc.org/en/download/file/1402/ihl-and-ihrl.pdf>.

²⁵*Mike Campbell Pvt. Limited and Others v Republic of Zimbabwe, Case SADCT 2/07, SADC Tribunal*.

made up of 54 governmental representatives elected by the Council, irrespective of the human rights record of the States concerned. The main accomplishment of the Commission was the elaboration and near-universal acceptance of the three major international human rights instruments: the Universal Declaration of Human Rights, adopted in 1948, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), the latter two adopted in 1966.

II. Treaty-Based system

The first treaty, adopted in 1948, was the Convention on the Prevention and Punishment of the Crime of Genocide, which addressed the most immediate past experience of the Nazi Holocaust. Since then, a huge number of treaties have been adopted, covering a wide array of subjects, eight of them on human rights - each comprising a treaty monitoring body - under the auspices of the United Nations. The first, adopted in 1965, is the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), followed by ICCPR and ICESCR in 1966. The international human rights regime then started to move away from a generic focus, shifting its attention instead to particularly marginalized and oppressed groups or themes: the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984); the Convention on the Rights of the Child 1989, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990); and the Convention on the Rights of Persons with Disabilities (2006). The latest treaty is the International Convention for the Protection of All Persons from Enforced Disappearances (ICED), also adopted in 2006 but yet to enter into force. With the adoption of an Optional Protocol to ICESCR in 2008, allowing for individual complaints regarding alleged violations of socio-economic rights, the UN treaty system now also embodies the principle that all rights are justifiable.

Regional level

Since the Second World War, three regional human rights regimes - norms and institutions that are accepted as binding by States have been established. Each of these systems operates under the auspices of an intergovernmental organization or an international political body. In the case of the European system - the best of the three - it is the Council of Europe, which was founded in 1949 by 10 Western European States to promote human rights and the rule of law in post-Second World War. The Organization of American States (OAS) was founded in 1948 to promote regional peace, security and development. In Africa, a human rights system was adopted under the auspices of the Organization for African Unity (OAU), which was formed in 1963 and transformed in 2002 into the African Union (AU). The League of

Arab States was founded in terms of the Pact of the League of Arab States of 1945. Its overriding aim is to strengthen unity among Arab States by developing closer links between its members. The Pact emphasizes the independence and sovereignty of its members, but no mention is made in its founding document of either the contents or principles of human rights.²⁶

3. Philosophical Discourse on Human Right laws

Natural rights are those which appertain to man in right of his existence. Of this kind are all the intellectual rights, or rights of the mind, and also all those rights of acting as an individual for his own comfort and happiness, which are not injurious to the natural rights of others. Civil rights are those which appertain to man in right of being a member of society. Every civil right has for its foundation, some natural right pre-existing in the individual, but to the enjoyment of which his individual power is not, in all cases, sufficiently competent. Of this kind are all those which relate to security and protection.²⁷

The social contract views of writers such as Jean-Jacques Rousseau,²⁸ who argued that people agree to live in common if society protects them. Indeed, the purpose of the state is to protect those rights that individuals cannot defend on their own. Rousseau had set the ground for Paine decades earlier with his *Social Contract*,²⁹ in which he not only lambasted attempts to tie religion to the foundations of political order but disentangled the rights of a society from natural rights. In Rousseau's view, the rights in a civil society are hallowed: "But the social order is a sacred right which serves as a basis for other rights. And as it is not a natural right, it must be one founded on covenants."³⁰ Rousseau then elaborated a number of rights of citizens and limits on the sovereign's power. The debate in the late eighteenth century has left telling traces. Modern theorists have developed a notion of natural rights that does not draw its source of inspiration from a divine ordering. The ground work for this secular natural rights trend was laid by Paine and even Rousseau. In its place has arisen a variety of theories that are humanist and

²⁶ *International Human Rights Law: A Short History*, United Nations, accessed sep25, 2024, available at <https://www.un.org/en/chronicle/article/international-human-rights-law-short-history>.

²⁷ Thomas Paine, *The Rights of Man* (Penguin Books 1985) at 68.

²⁸ Jean-Jacques Rousseau was a political and moral philosopher of the Enlightenment Era. He is well known for his work *On the Social Contract*, which questioned the purpose and place of government and its responsibility for its citizens.

²⁹ Social contract theory says that people live together in society in accordance with an agreement that establishes moral and political rules of behavior.

³⁰ Jean-Jacques Rousseau, *The Social Contract*, Maurice Cranston (trans.), Baltimore: Penguin, 1968, p.50. For Rousseau's views of the connection between religion and the state, see: Book IV, ch.8.

rationalist; the 'natural' element is determined from the prerequisites of human society which are said to be rationally ascertainable. Contemporary notions of human rights draw very deeply from this natural rights tradition. In a further extension of the natural rights tradition, human rights are now often viewed as arising essentially from the nature of humankind itself. The idea that all humans possess human rights simply by existing and that these rights cannot be taken away from them are direct descendants of natural rights.

However, a persistent opposition to this view builds on the criticisms of Burke and Bentham, and even from the contractarian views of Rousseau's image of civil society. In this perspective rights do not exist independently of human endeavor they can only be created by human action. Karl Marx³¹ also left a legacy of opposition to rights that hindered socialist thinkers from accommodating rights within their theories of society. Marx denounced rights as a fabrication of bourgeois society, in which the individual was divorced from his or her society. Rights were needed in capitalist states in order to provide protection from the state. In the Marxist view of society, an individual is essentially a product of society and, ideally, should not be seen in an antagonistic relationship where rights are needed.³² However, many socialists have come to accept certain conceptions of rights in the late twentieth century.³³ In order for human rights to enjoy universal legitimacy they must have a basis that survives charges of ideological imperialism. Human rights must have a universally acceptable basis in order for there to be any substantial measure of compliance.³⁴

4. Generations of Human Rights

The division of Human Rights into three generations was introduced in 1979 by Czech jurist Karel Vasak, a distinguished and very well-known human rights scholar, introduced the idea of three generations of human rights, which allows us to understand the types and evolution of human rights better. The first generation of human rights is civil and political rights. The second generation of human rights includes economic, social and cultural rights and the third generations of human rights are called solidarity rights.

The first-generation rights i.e., civil and political rights are the initial form of natural rights. These rights developed during the English Revolution of the 17th century

³¹Karl Marx is best known for his theories that led to the development of Marxism. His ideas also served as the basis for communism.

³² Karl Marx, "On the Jewish Question", Jeremy Waldron (ed.), *Nonsense upon Stilts*.

³³For a full discussion see: Tom Campbell, *The Left and Rights: A Conceptual Analysis of the Idea of Socialist Rights*, London: Routledge and Kegan Paul, 1983.

³⁴. Allan Gewirth, "Why There Are Human Rights", (1985) 11 *Social Theory and Practice*, 235-248, at p.235.

and the French and American Revolution of the 18th century. The key theme underlying these rights is liberty. The first-generation rights include the right to life, the right to liberty, and the right to property and have expanded to include non-discrimination, freedom from arbitrary arrest, freedom of thought, freedom of religion, freedom of movement etc. The key documents to understand the content of the first generation of human rights are Article 3 to Article 21 of the UN Declaration and the International Covenant on Civil and Political Rights of 1966 which came into force in 1976.

In the twentieth century, especially post World War II, second-generation rights began to earn a greater prominence. The economy of countries was torn by war and there was massive destruction as a result of the world wars. Therefore, the effort for economic, social and cultural rights developed during the twentieth century. The second-generation rights include the right to work, the right to health care, the right to education, the right to social security etc. Therefore, these rights are seen as a manifestation of positive rights as they place a claim on the state and a duty to oblige for action, for example, welfare provisions. The key documents to understand the content of second-generation rights are Article 22 to Article 27 of the UN Declaration and the International Covenant of Economic, Social and Cultural Rights of 1966.

The third generations of rights emerged post-1945 and are referred to as solidarity rights. This is for the simple reason that these rights are concerned with social groups and society on the whole rather than an individual. They are therefore seen as collective rights. The underlying theme of the third-generation rights is fraternity. Usually, these rights are shaped by the difficulties faced by the countries of the Global South. These rights include the right to development, the right to environmental protection, the right to self-determination, the right to peace etc. The Stockholm Convention of Human Environment of 1972 and the Earth Summit of 1992 at Rio can be analyzed to understand these rights.³⁵

5. Sources in Human Rights Law

Human Rights as Universal Rights Human rights are best interpreted as the rights everyone has, by virtue of their humanity (e.g. Article 1 of the UDHR). The fact that human rights belong to everyone, wherever they are, is constitutive of their 'universality'. The universality of human rights, and their right-holders, should be carefully delineated from that of their duty-bearers and from what one may refer to as the universal scope of human rights duties. The Integrated Universal Bill of Rights International human rights treaties do not stand alone in the sources of

³⁵ Supra note 3.

International Human Rights Law (IHRL).³⁶ In the development of this new human rights law, international treaties certainly play the most obvious role and give rise to the least jurisprudential difficulties. However in human rights as in any other branch of the law, participation in treaties is at the discretion of States, the substance of the relevant treaties is often unsatisfactory and sometimes there simply is no treaty around. Thus the need for additional sources of international human rights law³⁷. International human rights law refers to the body of international law designed to promote and protect human rights at the international, regional and domestic levels. International human rights law primarily consists of treaties and customary international law.

6. Regime holds in Human Right Laws

Human right is important as every other right. However, there are certain rights which are more fundamental than others. This is because for example the Rights to Life and the Right not to be subjected to Retroactive law are so fundamental that they cannot be sanctioned even in times of grave emergencies. The Right to Life is one of the most important fundamental rights which a state should not deprive you of except in those very limited circumstances. The regime of sources for human rights laws generally refers to the various documents, treaties, conventions, and principles that form the basis of international human rights law. Universal Declaration of Human Rights (UDHR): Adopted by the United Nations General Assembly in 1948, the UDHR outlines fundamental human rights principles that serve as the foundation for international human rights law. International Human Rights Treaties: These include legally binding agreements that countries have signed and ratified, such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Regional Human Rights Treaties: These are agreements specific to certain regions, like the European Convention on Human Rights (ECHR) and the American Convention on Human Rights (ACHR). Customary international law plays a significant role in shaping human rights norms. General Principles of Law derived from various legal systems around the world that are considered fundamental to the protection of human rights, such as the principle of non-discrimination and the principle of equality before the law. Judicial Decisions and

³⁶Samantha Besson, "The Sources of International Human Rights Law: How General is General International Law?" in *The Oxford Handbook of the Sources of International Law*, eds. Samantha Besson and Jean d'Aspremont (Oxford University Press, 2017), 837–870, accessed oct. 9, 2024, available at: https://hal.science/hal-02516181v1/file/bessons.-sourcesofinternationalhumanrightslaw_1.pdf.

³⁷<https://www5.austlii.edu.au/au/journals/AUYrBkIntLaw/1989/5.pdf>, accessed oct. 9, 2024.

Case Law, Decisions by international and regional courts, such as the International Court of Justice (ICJ) and the European Court of Human Rights (ECHR), contribute to the development and interpretation of human rights law. Soft Law Instruments includes declarations, resolutions, guidelines, and recommendations that, while not legally binding on their own, can influence state behavior and contribute to the development of human rights norms. These sources collectively create a framework for understanding, promoting, and protecting human rights at the international, regional, and national levels. A landmark judgment given by the European Court of Human Rights is that of *Osman vs UK*.³⁸ In this case the European Court of Human Rights concluded that the Police were obliged to take reasonable steps to protect the life of Osman, as they aware that his life was in real and immediate risk. When someone is killed by Police/Army or Prison Officers, this always engages their right to life. In these circumstances Article 2 impose a duty on the state to investigate the death and therefore if a state fails to investigate, the state in question will be violating Article 2. Article 7 of the European Convention of Human Rights – No Punishment without legislation, this article clearly states that no one can be found guilty of a criminal offence if what he/she did was not an offence at the time when such offence was committed. Therefore, this Article prevents Parliament from enacting retroactive laws.

7. Conclusion

Human rights belong to everyone without discriminating against any particular race, religion, caste, creed and other such differences. They are fundamental in the sense they are crucially important and are of prime importance. Human rights are absolute implication is that they are basic for each individual and they are indivisible. The origin of "human rights laws" lies in the nature of the human being itself, as articulated in the entire world's major religions and moral philosophy, "human rights law" is a more recent phenomenon that is closely associated with the rise of the liberal democratic State. For many centuries, there was no international human rights law regime in place. In fact, international law supported and colluded in many of the worst human rights atrocities, including the Atlantic Slave Trade and colonialism. The first international legal standards were adopted under the auspices of the International Labor Organization (ILO), which was founded in 1919 as part of the Peace Treaty of Versailles. The social contract views of writers such as Jean-Jacques Rousseau, who argued that people agree to live in common if society protects them. Indeed, the purpose of the state is to protect

³⁸The Manitoba Court of Appeal held that prostitutes' communications were not included in the freedom of expression embodied in the Canadian Charter of Rights and Freedoms. However, this decision was overturned in the Supreme Court of Canada, where a majority declared that these communications were included in the general right.

those rights that individuals cannot defend on their own. Rousseau had set the ground for Paine decades earlier with his *Social Contract*, in which he not only lambasted attempts to tie religion to the foundations of political order but disentangled the rights of a society from natural rights. Human Rights as Universal Rights Human rights are best interpreted as the rights everyone has, by virtue of their humanity (e.g. Article 1 of the UDHR). The fact that human rights belong to everyone, wherever they are, is constitutive of their 'universality'.

References

- Rebecca J. Cook et al., REPRODUCTIVE HEALTH AND HUMAN RIGHTS: INTEGRATING MEDICINE, ETHICS, AND LAW 8 (Oxford University Press Inc., 1st ed., 2003).
- Human Rights (Law), Human Rights Monitoring, and the UN Human Rights Framework & UN Treaty Bodies (published after 2000)
- Brysk, Alison. Global Good Samaritans: Human Rights as Foreign Policy. Oxford University Press, USA, 2009.
- Brysk, Alison, and Austin Choi-Fitzpatrick, eds. From Human Trafficking to Human Rights: Reframing Contemporary Slavery. University of Pennsylvania Press, 2011.
- Cassese, The Late Antonio. Realizing Utopia: The Future of International Law. Oxford University Press, USA, 2012.
- Dembour, Marie-Bénédicte, and Tobias Kelly, eds. Paths to International Justice: Social and Legal Perspectives. 1st ed. Cambridge University Press, 2007.
- Egan, Suzanne. The UN Human Rights Treaty System: Law and Procedure. Bloomsbury Professional, 2011.
- Freedman, Rosa. The United Nations Human Rights Council: A Critique and Early Assessment. Routledge, 2013.
- Freeman, Marsha A., Christine Chinkin, and Beate Rudolf. The UN Convention on the Elimination of All Forms of Discrimination Against Women: A Commentary. Oxford University Press, USA, 2012.
- Gearty, Conor. Liberty and Security. Polity Press, 2013.
- Gearty, Conor, and Costas Douzinas, eds. The Cambridge Companion to Human Rights Law. Cambridge University Press, 2012.
- Goodhart, Michael. Human Rights: Politics and Practice. 2nd ed. Oxford University Press, USA, 2013.

Halme-Tuomisaari, Miia. *Human Rights in Action: Learning Expert Knowledge*. Brill Academic Publishers, Leiden, 2010.

Hafner-Burton, Emilie M. *Forced to Be Good: Why Trade Agreements Boost Human Rights*. Cornell University Press, 2009.