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Approach to Localize International Human Rights

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ABSTRACT

A critical analysis of Human Rights and its mechanism in the world. The first half illustrates the situation of human rights during ancient times followed by its evolution accordingly. The major contribution of the UN charter followed by its role in the Universal Human Rights Declaration. The Later part of this article is dealing with the regional human rights mechanism in the world. The most developed ones are discussed with their origin, function, and jurisdiction for the same and their major role in promoting and protecting human rights in a particular region.

Keywords: UDHR, EU, UN, Human Rights, Magna Carta, Declaration, Commission, Judicial, Protocol, Association, Constituent, World War, Fundamental, Freedom.

I. INTRODUCTION

During the nomadic era, people used to hunt animals to live for their survival. There was no law for them on which they could rely to eradicate chaos in the society. In accordance with the historical study, the life of humans was not different than that of animals. They did not live a dignified life rather slavery and torture existed as a common culture. In short, life was pathetic at that time due to the absence of human rights and law. Soon after human rights came into the picture, the things changed in the society, the condition started becoming better.

Human rights are the rights inherent to all human beings, irrespective of their race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.²

After the Second World War, the United Nations (UN) brought human rights firmly into the sphere of international law in its constituent document, the UN Charter,³ in 1945. The

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² United Nations Home Page (Accessed at 17:35 on August-22-2020), Available at <https://www.un.org/en/sections/issues-depth/human-rights/>

³ Charter of the United Nations, October 24, 1945, 1 UNTS XVI („UN Charter“).

purposes of the UN included, in Article 1(3), the promotion and encouragement of human rights and fundamental freedoms.⁴ Furthermore, under Articles 55 and 56, Member States are committed to a joint and separate action, to create conditions of stability and well-being across the world, including the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.⁵ Thus, it is evident that human rights could no longer be characterized as a domestic issue, hidden by the veil of state sovereignty.

Since 1945, the UN has been instrumental in the process of standard-setting, i.e. creating treaties and other documents that set out universally recognized human rights. Most notably, it adopted the Universal Declaration on Human Rights (UDHR) in 1948.⁶

II. HISTORY/ THE SPREAD OF HUMAN RIGHTS

In 539 B.C., the armies of Cyrus the good, the primary king of ancient Persia, conquered the town of Babylon. But it had been his next actions that marked the serious advancement for humans. He freed the slaves, declared that everyone has a right to settle on their religion, and established racial equality. These decrees were recorded on a baked-clay cylinder within the Akkadian language with a cuneiform script.⁷

Today the Cyrus Cylinder is known because of the ancient record which is now recognized as the world's first charter of human rights. It's translated into all six official languages of the United Nations and its provisions parallel to the primary four Articles of the Universal Declaration of Human Rights.⁸

As started in Babylon, the thought of human rights spread quickly to India, Greece, and even Rome. Then the concept of the law came into the image. It had been observed that the people attended follow many unwritten laws within the course of their life. Moreover, Roman law was supported by rational ideas and morals derived from natural things.

Various documents asserting individual human rights through different periods are as follows

1215: The Magna Carta—gave people new rights and made the king subject to the law.

⁴ "UN Charter" (Article 1(3)).

⁵ "UN Charter" (Article 55 and 56).

⁶ GA Res 217(111), December 10, 1948, UN Doc A/810 at 71 ("UDHR").

⁷ A Brief History of Human Rights (Accessed at 21:50 on August-22-2020), Available at <https://www.humanrights.com/what-are-human-rights/brief-history/>

⁸ *Ibid*

1628: The Petition of Right—set out the rights of the people.

1776: The United States Declaration of Independence—proclaimed the right to life, liberty, and the pursuit of happiness.

1789: The Declaration of the Rights of Man and the Citizen—a document of France, stating that all citizens are equal under the law.

1948: The Universal Declaration of Human Rights—the first document listing the 30 rights to which everyone is entitled.⁹

III. REGIONAL HUMAN RIGHTS MECHANISM

Regional Human Rights system consists of regional mechanisms and instruments that play an excessively important role in the promotion and protection of Human Rights. Regional human rights instruments such as treaties, conventions, declarations, etc, helps in localizing international human rights norms and standards to any particular region, wherever required. A mechanism like, commissions, special rapporteurs, courts then helps to implement the above-said instruments on the ground.¹⁰

Regional human rights regimes are independent coherent human rights that are nested within the larger frame and work on international human rights practice.¹¹ Currently, the most well established regional human rights system exists in Europe, America, and Africa identified by the European Convention on Human Rights, American Convention on Human Rights (The Americas), and African Charter on Human and Peoples' Rights respectively.

Europe

Protecting human rights in Europe is extensive. Founded in 1949, The council of Europe is the oldest organization working for European integration. It is an organization working as a legal personality recognized under public international law and has observer status with the United Nations. The Council of Europe is situated in Strasbourg, France. The Council of Europe is responsible for both the European Convention on Human Rights and the European Court of Human Rights.¹² These institutions hold the Council's members to a code of human rights

⁹ Youth for Human Rights (HISTORY OF HUMAN RIGHTS) (Accessed at 12:25 on August-23-2020), Available at, <https://www.youthforhumanrights.org/what-are-human-rights/background-of-human-rights.html>

¹⁰ A Rough Guide to the Regional Human Rights Systems (Accessed at 20:15 on August-23-2020), Available at <https://www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems>

¹¹ Donnelly, Jack (2003). *Universal human rights in theory and practice* (2nd ed.). Ithaca: Cornell University Press. pg. 138.

¹² Gender and reproductive rights home page (Accessed at 00:30 on August-25-2020), Available at <https://www.who.int/reproductivehealth/en/>

that are strict in nature but are more lenient than those of the **United Nations** charter on human rights. The Council is even dedicated to the promotion of the European Charter for Regional or Minority Languages and the European Social Charter. Anyone can be its member which seeks European integration, accepts the rule of law, and are willing and able to protect Fundamental Human Rights, Democracy, and freedom.¹³

Apart from the Council of Europe, the other involves the European Union, the Organisation for Security and Cooperation in Europe, the European Convention on Human Rights, the European Court on Human Rights. Each of them is intergovernmental organizations and each of them has its own regional human rights mechanisms and instruments. The Council of Europe is somewhat separate from the European Union (EU) but the EU is expected to accede to the European Convention and potentially the Council itself. Talking about the EU, it has its own separate human rights documents i.e. the Charter of the Fundamental Rights of the European Union.¹⁴

Since 1950, the European Convention on Human Rights was defined and it guarantees human rights and fundamental freedom in Europe. 47 members of the Council of Europe have signed this convention and comes under the jurisdiction of the European Court of Human Rights. Similarly, to prevent torture, inhuman treatment, and other cruel activities, the committee for the prevention of torture was established. The European Convention on Human Rights is situated at Strasbourg.

Lastly, The European Court of Human Rights which is considered as the only International Court which has the jurisdiction to deal with cases brought by individuals rather than States. One out of twenty cases submitted here is admissible. But the condition here in the court has become somewhat pathetic because of the pending and backlog cases. In 2007, the court issued 1503 verdicts and threw out more than 27000 complaints. Similarly, in the year 2010, the court had a backlog of over 120000 cases and a multi-year waiting list. The fact is that the court is unfunded and lacking judges, as a result, it is struggling with almost 80000 cases. Some of the cases are pending from the mid-1990s according to the court's annual survey. It is also assumed that with the current rate of proceedings it would take up to 46 years to clear the backlog.¹⁵

¹³ The Council of Europe in Brief (Accessed at 12:00 on August-28-2020), Available at http://www.coe.int/T/e/Com/about_coe/

¹⁴ Juncker, Jean-Claude (April 11, 2006). "Council of Europe – European Union: "A sole ambition for the European Continent".

¹⁵ Human Rights cases have 46-year backlog in EU (Accessed at 23:45 IST on August-25-2020), Available at <https://www.irishexaminer.com/world/arid-30345706.html>

The Americas

In the Americas, the inter-American system for the protection of human rights i.e., a regional human rights arrangement exists within the intergovernmental organization known as the Organisation of American States (OAS). The OAS is an international organization with its headquarter situated at Washington, D.C., United States of America. 35 independent states of America are its member. During the 1990s, after the end of cold war, in order to retrieve the democracy in Latin America and the step towards globalization, the OAS has made major efforts to fit in the new context. The OAS stated the list of priorities which includes the following:¹⁶

- Working for peace
- The rights of Indigenous Peoples
- Strengthening democracy
- Protecting human rights
- Promoting Sustainable development
- Combatting corruption

The inter-American system consists of a declaration of principles (American Declaration on the Rights and Duties of Man, adopted in 1948 seven months before the Universal Declaration) just as the United Nations (UN) Human Rights System. It is a legally binding treaty (American Convention on Human Rights, in 1978) as well as charter and treaty-based implementation mechanisms (the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights respectively). The charter applies to all member states of OAS, while the convention is only applicable to the state parties to it. The two systems work, collaborate, and interact with others in various ways. Further, the protection and promotion of human rights in the American Hemisphere became necessary, so the inter-American Commission was established under the OAS charter (Chapter XV). It is also situated in Washington D.C. and consists of seven independent members serving in a personal capacity. It receives individual petitions, keeps a check on the condition of human rights in member states, and address them accordingly for the proper functioning.

The inter-American Commission has also appointed several rapporteurs to provide the report to the organization. One Special rapporteur ship to monitor OAS states compliance with the inter-American Human Rights treaties. It includes a rapporteur on various rights such as a

¹⁶ OAS Key Issues (Accessed at 1:00 IST on August-27-2020), Available at <http://www.oas.org/en/topics/default.asp>

Rapporteur ship on the Rights of Persons Deprived of Liberty, a Rapporteur ship on the Rights of the Child, a Rapporteur ship on the Rights of Women, a Rapporteur ship on Migrant Workers and their Families, a Rapporteur ship on Human Rights Defenders, and a Special Rapporteur for Freedom of Expression.

Lastly, The Inter-American Court on Human Rights, established in 1979 and is based in San Jose, Costa Rica. Its main function is to enforce and interpret the provisions of the American Convention on Human Rights. Its two other major functions are thus adjudicatory and advisory. Under the adjudicatory function, it hears and rules on the specific cases of human rights violations referred to it. Under the advisory function, it issues opinions on matters of legal interpretation brought to its attention by other OAS bodies or member states.¹⁷

All OAS member States, the Commission, and OAS organs to a certain extent, can go to the Court for an advisory opinion. The member States can also request for an opinion or advice on the compatibility of national law with international instruments.¹⁸

Africa

The African Regional Human Rights is established under the organization known as the African Union (AU). It consists of 53 African states. The 1981 African Charter on Human and Peoples' Rights is the main regional human rights instrument in Africa and the main mechanisms are African Commission on Human and Peoples' Rights and the recently-established African Court on Human and Peoples' Rights. In 1986, the African Charter came into the force which includes universal human rights standards and principles. It also portrays the virtues and values of African tradition. Therefore, there is a reciprocal relationship between the community and individual, linking individual and collective rights as per the African Charter. African Commission for Human rights has been established under the African Charter, located in Banjul, Gambia.

The African Commission on Human and Peoples' Rights is an important organ of the African Union and is quasi-judicial in nature. It aims to promote and protect human rights and collective rights in the entire African Continent as well as to interpret the African Charter on Human and Peoples' Rights. It also accepts individual complaints on violation of the charter.

¹⁷ "Inter-American Court on Human Rights homepage". Inter-American Court on Human Rights. (January 3, 2008).

¹⁸ A Rough Guide to the Regional Human Rights Systems (Accessed at 13:15 on August-27-2020), Available at <https://www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems>

The commission has three major areas of responsibility:¹⁹

- Promoting human and peoples' rights
- Protecting human and peoples' rights
- To interpret the African Charter on Human and Peoples' Rights

To achieve the above goals, the commission is bound to collect documents, organize seminars, undertake studies and researches on African problems in the field of human and peoples' rights, disseminate information, symposia and conferences, encourage national and local institutions concerned with human and peoples' rights and, should the case arise, give its views or make recommendations to governments."

The African Commission has also established several Special Mechanisms including six Special Rapporteurs who monitor, investigate and report on allegations of violations in member states of the African Union and working group consisting of eleven members, committees or study groups that monitor and investigate human rights issues under the purview of the Commission.

Lastly, The Court of Justice of the African Union is considered as a "principal judicial organ of the union" (according to Protocol of the Court of Justice of the African Union, Article 2.2). It was established in the year 2004 under a protocol to the Charter which was adopted in 1998 and entered into force in January 2004. It takes over the duties of the African Commission on Human and Peoples' Rights, as well as acts as the supreme court of the African Union, interpreting all necessary laws and treaties. The jurisdiction of the court is overall the cases and dispute submitted to it concerning the application and interpretation of the African Charter, the Protocol, and any other relevant human rights instrument ratified by the States concerned.²⁰

Asia

In Asia, there is no proper organization or convention to promote and protect Human Rights. There is a drastic variation in the approach of Human Rights in different countries of Asia. The Association of Southeast Asian nation (ASEAN) is an economic and geopolitical organization consisting of 10 nations of Southeast Asia. It was formed in the year 1967 and aims at promoting social, political, and economic growth. Apart from this, its other function is cultural development among its members and the promotion of regional peace. In 2012, ASEAN

¹⁹ Mandate of the African Commission on Human and Peoples' Rights (Accessed at 16:25 on August-27-2020), Available at https://web.archive.org/web/20080120104536/http://www.achpr.org/english/_info/mandate_en.html

²⁰ A Rough Guide to the Regional Human Rights Systems (Last Accessed at 19:30 on August-27-2020), Available at <https://www.universal-rights.org/human-rights-rough-guides/a-rough-guide-to-the-regional-human-rights-systems>

adopted the ASEAN Human Rights Declaration but still have no human rights convention or courts.

Established in the year 1981, The Cooperation Council for the Arab States of the Gulf (CCASG) is a trade bloc involving the six Arab states of the Persian Gulf, with many economic and social objectives.

Further, there is, The Asia Cooperation Dialogue (ACD) is a body created in 2002 to promote Asian cooperation at a continental level, helping to integrate the previously separate regional organizations of political or economic cooperation.

IV. CONCLUSION

Analyzing the above information, it can be said that the regional human rights system has proved to be an important mechanism to control the violation of human rights in any of its member nations. Different organizations under a common head perform different functions to protect and promote human rights so that everyone is treated equally without being a victim of harsh and cruel treatment. There are various treaties, conventions, and other international texts that provide as a legal source for protection of international human rights laws and protection of human rights in general. International human rights instruments are often divided further into global instruments, to which any state within the world is often a celebration, and regional instruments, which are restricted to states during a particular region in the world.

Most conventions and proposals (but few declarations) establish mechanisms for monitoring and establish bodies to oversee their implementation. In some cases, these bodies which will have relatively little political authority or legal means, and should be ignored by member states; in other cases, these mechanisms have bodies with great political authority and their decisions are nearly always implemented. European Court of Human Rights serves as a good example of the same.

Monitoring mechanisms also vary on the degree of individual access to showcases of abuse and plea for remedies. Under some conventions or recommendations – e.g. the European Convention on Human Rights – individuals or states are permitted, subject to certain conditions, to require individual cases to a full-fledged tribunal at the international level. Sometimes, this will be wiped out by national courts due to universal jurisdiction.

As per the data of the currently functioning Regional Human Rights Mechanism in the Region of Europe, Africa, and The Americas are doing well. The approach is praiseworthy. So, other nations and the remaining region must also try to adopt this approach to protect

the human rights in their region by localizing it, as human rights are becoming a topic of major concern day by day.
