



Certified Human Rights Law Professional Sample Material

V-Skills Certifications

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V-Skills



1. BASIC CONCEPTS

The conceptual perspectives play a significant role for the promotion and realization of human rights in any society. Values help to crystallize any legal action, and play a very important role in the development of a society. The strict adherence of each of these values not only helps in the realization of human rights but to establish the concept of one world as envisaged by international law. This chapter focuses in without much debate and discussion on the theoretical perspective, the meaning of each one of the value.

1.1. Significance of Value

Value in general is a part of philosophy. Philosophy is one of the basic subjects which deal with the basic problems of mankind. In its discourse, it deals with issues such as existence, knowledge, values, reasons, mind, and language. It's theoretical Perspective developed by various theoreticians mainly based on a rational approach with critical outlook. Basing on the parameters of value, a number of other aspects developed to regulate the behavioral patterns of man. These values such as dignity, liberty, equality justice, ethics, and morals etc., have had their significant impact to shape the human relations in a society. These philosophical concepts have a profound impact on law.

The main aim and function of Law in any society is to regulate the relations between men and to alleviate the intensity of conflicts to promote peace, security, good and orderly behavior of mankind to establish a conflict free society. This being the main function of law, it absorbs all the essential tools from every field of study with a critical outlook. This in turn will help to analyze each issue and lay norms to develop a rational human mind to achieve maximum results in their inter-relationships with each other. Since the concept of right and its exercise and regulation centered round basing on a number of values developed from ancient to modern times, they have had a great impact in the realization, promotion, and protection of human rights. In view of the linkage and importance that values play a significant role in the promotion and realization of human rights; the different concepts of values are examined in brief.

1.2. Human Values

“The value concept... [is] able to unify the apparently diverse interests of all the sciences concerned with human behavior.”Rokeach.

The above view of the psychologist makes it clear, the concept of value and its relationship with the behavioral pattern of individuals in a society. In general, we think of values that are commonly followed by us in day to day life. These values vary from person to person, depending on their experiences and circumstances in which they grow. However, there are certain basic values which are common to all. They are life, liberty, security, freedom, and success, security to life, kindness, pain and pleasure. Depending on the circumstances, which each person grow up considers which value is important to him. But adhering to values which are common to all, in the longer run develops a society to establish peace for the progressive all round development of all the sections of a society. This will help to learn to live with unity in diversity

According to a number of scholars, conceptually values are beliefs which are subjective in their exercise by each individual. Values motivate people to achieve their goals. Values transcend time and territory and develop relationships and regulate the behavioral patterns of individuals.

These being the central aspects of values, a number of scholars identified ten basic values, which motivate and regulate the behavior of human beings in achieving their goals. They are -

- ✓ Self-destruction, which promotes an independent thought which results in a
- ✓ Judicious decision making process in creating or exploring the goal.
- ✓ Stimulation creates excitement, novelty and challenges in life.
- ✓ Hedonism (Self Satisfaction) brings in pleasure and sensuous gratification for oneself.
- ✓ Achievement demonstrates the competence of individuals according to the standards of society.
- ✓ Power brings in social status and prestige, control over people, and resources.
- ✓ Security brings in harmonious relationship between individuals, to guide the society to establish a compatible environment for people to lead a life with pleasure and groom their freedoms.
- ✓ Conformity to social standards mainly regulates the behaviour of individuals, and prevent the wrong doing activities by individuals to themselves, and towards one another in the society.
- ✓ Tradition promotes the qualities of respect to the practices that are inherent in society.
- ✓ Religion promotes the innovation of knowledge and furtherance of values to the achievement of peace and security. It teaches a happy sharing of the benefits that are derived through the promotion of knowledge.
- ✓ Benevolence establishes the belief, and enhances the qualities of welfare to promote the interests of the individuals with whom each one interacts in their day to day activities.
- ✓ Lastly, universalism promotes the qualities of understanding, appreciation, Tolerance and protection for the welfare of people. It takes care of developing harmonious living, and to work for the benefit of advancement of scientific Knowledge, and to share the resources equally.

The philosophy of human rights is similar with that of the above values. Therefore, values are one of the basic aspects of human rights. The strict adherence of human rights restores not only to values, but also in turn able to achieve peace, security and harmonious living community without any kind of discrimination that exist between individuals and nation-states.

1.3. Human Rights

Human beings are born equal in dignity and rights. These are moral claims which are inalienable and inherent in all individuals by virtue of their humanity alone, irrespective of caste, colour, creed, and place of birth, sex, cultural difference or any other consideration. These claims are articulated and formulated in what is today known as human rights. Human rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person.” Human rights when they are guaranteed by a written constitution are known as “Fundamental Rights” because a written constitution is the fundamental law of the state.

1.4. Characteristics of Human Rights

The characteristics of human rights are

- ✓ Human Rights are Inalienable - Human rights are conferred on an individual due to the very nature of his existence. They are inherent in all individuals irrespective of their caste, creed,

religion, sex and nationality. Human rights are conferred to an individual even after his death. The different rituals in different religions bear testimony to this fact.

- ✓ Human Rights are Essential and Necessary - In the absence of human rights, the moral, physical, social and spiritual welfare of an individual is impossible. Human rights are also essential as they provide suitable conditions for material and moral upliftment of the people.
- ✓ Human Rights are in connection with human dignity - To treat another individual with dignity irrespective of the fact that the person is a male or female, rich or poor etc. is concerned with human dignity. For eg. In 1993, India has enacted a law that forbids the practice of carrying human excreta. This law is called Employment of Manual Scavengers and Dry Latrines (Prohibition) Act.
- ✓ Human Rights are Irrevocable - Human rights are 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.
- ✓ Human Rights are Necessary for the fulfillment of purpose of life - 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 Universal - Human rights are not a monopoly of any privileged class of people. Human rights are universal in nature, without consideration and without exception. The values such as divinity, dignity and equality which form the basis of these rights are inherent in human nature.
- ✓ Human Rights are never absolute - Man is a social animal and he lives in a civic society, which always put certain restrictions on the enjoyment of his rights and freedoms. Human rights as such are those limited powers or claims, which are contributory to the common good and which are recognized and guaranteed by the State, through its laws to the individuals. As such each right has certain limitations.
- ✓ Human Rights are Dynamic - 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.
- ✓ Rights as limits to state power - 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.

1.5. Dignity

Dignity is another value that regulates the behaviour of individuals. Dignity is a relative term with regulatory nature. It prescribes the norms and ethical standards Needs to be followed and adopted.

In the day to day inter-relationships, individuals are expected to behave with one Another in a dignified and honest manner. This concept dictates that every one of us has to exercise due caution and care in our relations without undermining the Capacities of other persons. Further, it teaches us not to create a situation wherein others are made to undergo either emotional, psychological, physical, tense situations, or to harm their personality.

Since dignity plays a vital role, in regulating the human relations and for the furtherance of human rights, (especially, the basic rights of liberty, equality, and freedom), the Universal Declaration of Human Rights (UDHR), in no uncertain terms, declared that all individuals are equal in the eye of law. All are deserves to be treated with utmost respect without harming the dignity of others at all times. If people across the world follow the ethical norm of dignity without any deviance, the realization of right would be easy. This fundamental norm applies to individuals and States to follow with strict adherence. In the modern context though a number of conventions, covenants, and declarations have been adopted in the international arena, to promote human rights on the concept of dignity. The lack of adherence by individuals and nation-states brought in untold sorrow and miseries to mankind. The non adherence to ethical values, especially, indecent behaviour of individuals at times, posing a number of problems in the contemporary era. This in turn has an effect in the promotion and realization of human rights.

1.6. Liberty

Liberty is another concept which plays a vital role in the promotion of human rights. Liberty is an ancient concept. This concept has its roots in the political philosophy. A number of philosophers like, Hobbes, Locke, Rousseau, and many more have articulated Liberty in different contexts. In simple terms, liberty means, human beings are free to regulate their relations, and are able to govern their relations, behave at their own will, and be responsible for their acts. The concept of liberty is centered around responsibility or duty. Basing on the acts performed by individuals, liberty can be enjoyed or achieved. If the acts are bad or performed with an intention to defray anybody or deprive them of their legal claims, they not only affect the rights of others, but also of their own in the long run. This in turn will have an effect on the realization of their rights.

The concept of liberty is the basics for the development of a right. According to Hobbes, every individual is empowered to enjoy their freedoms freely without the interference of any other person. In his social contract theory, he argued that the divine will of kings to regulate the relations and to restrict the freedoms of individuals is antithesis to liberty of individuals. The enlightenment of liberty by various political and legal philosophers, led to a number of political revolutions across the world. This in turn led to establish democratic societies on the basis of liberty of individuals to choose their leaders.

In the contemporary era, the excessive arguments for liberty, and its indiscriminate exercise without strict adherence to duty by individuals in their



Numerous acts again resulted in bringing miseries to the world. In order to resolve the problems and to provide a problem free world, the UN took a number of legal steps for the promotion of human rights. The aim of these acts of UN is to regulate the behaviour of the mankind and to guide them to discharge their duties to uplift the moral and ethical values. This in turn will help to restore liberty in its true sense and makes individuals to be happy for their legal and justified actions.

Apart from the above, it is the duty of nation-states also to adhere to the principles of international law and human rights in their relations, respecting the concept of liberty of the other nations and their citizens. The Strict adherence to liberty and practice of self restraint alone would yield the desired results in protecting the rights of every citizen as guaranteed by law.

1.7. Equality

Equality is another important component of human rights. From ancient to modern times, people are fighting to achieve this in terms of its practical application to each situation. In general, equality proposes to bring all the people into one category, and apply the principles of law, and justice without any distinction, whatsoever it may be among the individuals. Equality is a relative concept which may be distinguished basing on a number of factors, and the enjoyment of rights on an equal footing. The aim of the Universal Declaration of Human Rights and the Constitutions of the various countries including India are to treat all the people on an equal footing without any kind of discrimination. This may be referred to formal equality, wherein in the eyes of law all are equal.

Although, all people are numerically considered as equal in the eyes of law, in providing the amenities or distribution of resources, all may not be considered or treated as equal in reality. This is because of the socio, economic, political and cultural conditions that prevail in each society. In order to uplift the people who are not equal on any ground specified above, they need to be given certain concessions and facilities to improve their status and to reach the equal status with that of others who are on a high pedestal.

To achieve the rigor of equality and to fill the gap especially on socio-economic and cultural grounds, the principles of international law of human rights provides for the necessary concessions to be extended, to people at the national level by states.



This will result in to achieve the status of equality of all in the eye of law. Once they achieve the equal status in all respects, the concessions extended to specific group of people to uplift their status, may be withdrawn by the state. The same principle applies to states at the International level. Accordingly the developed states need to extend concessions to the developing states.

1.8. Justice

Justice in simple terms may be defined as righteousness, fair and to be treated on just and equitable grounds. Justice is an important concept which has attracted a number of fields especially, law and philosophy. To achieve absolute justice, scholars have prescribed a number of factors. Basing on the various factors that are relevant to each society, and to fill the gap between un-equals and equals, from ancient to modern times, a number of scholars have advocated various theories to achieve the concept of justice.



In order to measure the concept of Justice, a number of tools are required. To achieve perfect justice, it lays its emphasis on concepts of equality, morality and ethics. The aim of human rights is to provide such stable conditions to everyone by the states, which alone could help to achieve the rights in a justifiable manner. According to Plato, Justice being the highest value, and to attain it, an individual has to be provided with all the necessary conditions to realise the right, and to discharge his duties towards society. It again lay emphasis on the actors and the state as well to discharge every single obligation with devotion of duty and respect for other values.

1.9. Ethics and Morals

Ethics and Morals are considered as equal concepts. However, there exists a subtle difference between these two. Morals deal with the personal character of an individual. On the other hand, Ethics lays its importance on a social system, which regulates the code of conduct of a group of individuals. In other words, the morals need to be applied in each society depending on the values that are acceptable by a society. From the perspective of human rights, the concept of freedom and

liberty being basic principles forms part of moral principles. The concept of Justice, Equality and the participation of individuals in the socio-cultural aspects of the community are ethical aspects. Accordingly, every human being in a society is responsible at all times to strive to achieve human rights as a moral or ethical subject of society.

Value is the central issue of ethics. Ethics is a normative science of human conduct in society, which differentiates between right and wrong, good or bad, proper or improper. The standard, which makes one to differentiate good from bad or right from wrong, is a value. Ethics with reference to human rights presupposes freedom as a necessary pre-condition. A free man can take his decision of action and such a decision can be evaluated as good or bad, right or wrong, proper or improper. Goodness is the highest of value. Goodness is objective, universal and rational. Some basic values are - courage, tolerance, benevolence, kindness and friendship. Values are instrumental or absolute, intrinsic or extrinsic.

Values provide a standard to decide that an action is good. The basic issues of ethics/moral philosophy are - freedom, duty, rights, responsibility, happiness and goodness. Values are based on common or social consent. They are shared by all in the society.

The above brief discussion of the various concepts, highlight the significance that human rights can never be achieved in to until and unless, we the people of the United Nations (which includes the nation-states), discharge the responsibilities with utmost sincerity. This in turn enables us to achieve, universalization of human rights without any kind of deviation to race, sex, language, religion, region, etc. This leads one to learn how to live in a diversified world, more particularly in the contemporary era of fourth phase of globalization, wherein the concept of unity in diversity assumes greater significance than in yester years.

1.10. Unity in Diversity

Unity in diversity in general means, people of different backgrounds basing on their socio-economical, politico-cultural perspectives have to live like a single family. This means, the different faiths and characters that people posses have to live in a compatible manner under a single legal roof governed by a State. The same is applicable to people around the world, and the nation-states learn to live as one community. This being the main aim of international law to establish a one world concept, it had given birth to human rights. Its aim is to achieve, the aspirations of profoundly divided humanity by setting a common standard of norms for all people and all nations. To accomplish the one world concept, the mankind has a responsibility to learn to live harmoniously.



Further, it will enable us to achieve the basic tenets of life, liberty, equality, dignity and freedom of thought and expression with due care and caution to promote the rights of all the people living in different political systems. This will in turn enable us to claim legitimately the protection extended by human rights. And, to justify the existence of man as a human kind living under different political regions It will help further, to establish the fundamental goal of United Nations to resolve innumerable problems that are haunting us both nationally and internationally. Nearer home, the concept of 'vasudhaiva kutumbakam', in the Indian context advocates the same ideology of living together of mankind with values and morals, which alone ultimately establish a conflict free society.

1.11. The Evolution of Human Rights

The evolutions of human rights have taken place over centuries. Man had to struggle hard in order to achieve the ultimate goal—living with dignity – which still has to be realized in various societies. India itself is an example where women, children, dalits, bonded labourers, etc, is trying hard to be a part of mainstream. In spite of all these, the world recognized the U.N. Charter of 1945 which states that human rights are inalienable aspect of mankind. The origin of human rights may be traced to the theory of Natural Rights derived from the concept of Natural Law, as propounded by ancient Greek Stoic Philosophers and further developed by Thomas Hobbes and John Locke. The American and French Revolution gave further impetus to the struggle of human rights. The evolution and development of human rights in the international context can be traced to the Magna Carta and the English Bill of Rights followed by the French Declaration and the American Bill of Rights.

The twentieth century witnessed the crystallization of the philosophy of Human Rights when the United Nations adopted the UN Charter, 1945, The Universal Declaration of Human Rights, 1948 and the International Covenants on Human Rights with further emphasis to protection of rights of Women, Abolition of Slavery, Racial Discrimination, Civil and Political Rights, Economic, Social and Cultural Rights and most importantly the Rights of children.

In India the drafters of Constitution took care to incorporate Human Rights for its own citizens as well as for the aliens. Though the expression 'human rights' had its origin in international law, which is not older than the World War II, the concept of an individual having certain basic, inalienable rights as against a sovereign State had its origin in the doctrines of natural law and natural rights.

Thomas Hobbes (1588 - 1679), John Locke (1632 - 1704) and Jean-Jacques Rousseau (1712 - 1778) are the three main thinkers who developed the Natural Rights theory. Thomas Hobbes advocated that no individual could ever be deprived of the right to life, which he enjoyed in the state of nature. He asserted that all human beings are equal, without any consideration. John Locke developed the idea further and argued that every human being has a natural right to life, personal liberty, and property, and that no governmental authority has power to deprive individuals of these rights because they had enjoyed them even before the creation of the civil or political society. Rousseau, the greatest master of natural law school, states that "All men are born free but everywhere they are in chains." Paine an American revolutionary thinker developed the doctrine of natural rights without linking it to the social contract theory.

1.12. Human Rights Landmarks

The important landmarks in the progress of human rights are

- ✓ The Magna Carta, 1215 - The Magna Carta, also known as the Great Charter, of 1215 is the most significant constitutional document of all human history. The main theme of it was protection against the arbitrary acts by the king. The 63 clauses of the Charter guaranteed basic civic and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. King John of England granted the Magna Carta to the English barons on 15th June 1215. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter.
- ✓ The English Bill of Rights, 1689 - The next source and avenue of the development of the philosophy of human rights is the English Bill of Rights, enacted on December 16, 1689, by the British Parliament. The British Parliament declared its supremacy over the Crown in clear terms. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and clarified the rights and liberties of the citizens. It lays down the twin foundations, viz., the supremacy of the law, and the sovereignty of the nation, upon which, the English constitution rests.
- ✓ American Declaration of Independence, 1776 - The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776. The declaration charges the king with tyranny and affirms the independence of the American colonies. The declaration of independence has great significance in the history of mankind as it justified the right to revolt against a government that no longer guaranteed the man's natural and inalienable rights.
- ✓ The U.S. Bill of Rights, 1791 - The U.S. Constitution was enacted on 17th September 1787. The most conspicuous defect of the original constitution was the omission of a Bill of Rights concerning private rights and personal liberties. Madison, therefore proposed as many as twelve amendments in the form of Bill of Rights. Ten of these were ratified by the State legislatures. These ten constitutional amendments came to be known as the Bill of Rights. The overall theme of the Bill of Rights is that the citizen be protected against the abuse of power by the officials of the States.
- ✓ The French Declaration of the Rights of Man and of the Citizen, 1789 - The fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles. The Declaration of the Rights of Man and of the Citizen has far reaching importance not only in the history of France but also in the history of Europe and mankind.
- ✓ Declaration of International Rights of Man, 1929 - After World War I, questions about human rights and fundamental freedoms began to be raised. In 1929, the Institute of International Law adopted the Declaration of International rights of Man. The Declaration declared that fundamental rights of citizen, recognized and guaranteed by several domestic constitutions,

especially those of the French and the U.S.A constitutions, were in reality meant not only for citizens of the states but for all men all over the world, without any consideration.

- ✓ The UN Charter, 1945 - The United Nations Charter was drafted, approved and unanimously adopted by all the delegates of the 51 states, who attended the United Nations Conference at San Francisco. The UN Charter contains provisions for the promotion and protection of human rights. The importance of the Charter lies in the fact that it is the first official document in which the use of 'human rights' is, for the first time traceable and which also recognized the respect for fundamental freedom.
- ✓ The Universal Declaration of Human Rights, 1948 - The Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations on 10th December, 1948. The Declaration consists of thirty Articles and covers civil, political, economic, social and cultural rights for all men, women and children. The declaration however is not a legally binding document. It is an ideal for all mankind.
- ✓ International Covenants on Human Rights - The Universal Declaration of Human Rights, 1948 was not a legally binding document. It lacked enforcements. This deficiency was sought to be removed by the U.N. General Assembly by adopting in December, 1966, the two Covenants, viz, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. The two International Covenants, together with the Universal Declaration and the Optional Protocols, comprise the International Bill of Human Rights. The International Bill of Human Rights represents a milestone in the history of human rights. It is a modern Magna Carta of human rights.

1.13. Classification

Though we try to classify different criteria of human rights, the clear-cut division of human rights and freedoms into groups (kinds) is not always possible; every classification is nominal because each right can be attained in different forms. For example, the right of each human to an education is realized, like the need for development of each person (acquiring new knowledge and skills), like the activity of government in the creation of conditions for education of its citizens (construction of schools, publication of manuals, training of teachers) and even like the type of creativity of a person (attendance of music schools, etc.). Thus, the right to an education can be regarded as the personal right of each human – a social right – guaranteed by the State, as well as a cultural right.

As per Spheres of Life Activity

In almost all international legal and interstate normative acts, which are devoted to the human rights in general (and not to some separate groups), the rights and freedoms are divided into personal (civil), political, social, economical, and cultural. Personal (civil) rights and freedoms are applied not only to the citizens of the State, but to all people who live on its territory. They constitute a basis for the legal status of a person, have natural characteristics in origin and belong to everyone starting from birth without any limitations. The State is obliged to fight against violations of personal rights and freedoms. The most important rights of this group include the right to life; the right to personal security; freedom from slavery, violence, and imprisonment; security of private life and residence; freedom of conscience and religion; freedom of marriage; and others.

Political rights and freedoms express the possibility of participation of a person (as a rule, the citizen of the country) in society's political life, in the formation and realization of State power. Political rights are aimed at strengthening the connection between the citizen and society and the State. They are aimed at not allowing the people's indifference towards the destiny and activity of their country. That is why they are also called public rights. Political rights include freedom of speech and opinion, the right to access public service, the right to participation in political movements and parties, the right to gather, and freedom of meetings, manifestations, petitions, as well as others. Political rights can be realized both individually and in association with others.

Social and economic rights and freedoms are aimed at the provision of welfare and the quality of a person's life. These rights give a person the possibility of self-development in the sphere of production and distribution of benefits, receive guarantees and State defense of economic freedom and social stability. To this group belongs the right to private property, freedom of entrepreneurship, the right to work and the right to rest, the right to succession, right to social security and health protection, and many others.

Cultural rights and freedoms guarantee spiritual development of a human, and help each individual to be spiritual or cultural. The cultural rights include the right of each person to participate in cultural life, the right to social values, the right to free use of archival and library stocks, the right to use one's native language, the right to development of culture in accordance with one's national and ethnical identity, etc.

As per Time of Appearance

Besides the given classification according to the basic spheres of life activity of a society, it is also customary to divide human rights according to the time of their appearance and incorporation into documents into three generations - first (end of the 18th century), second (middle of the 20th century) and third (1970s and 1980s).

Other Types

There are many other types of classifications. Thus, for example, by the politico-legal status of a person (presence of the citizenship of the State), all the rights and freedoms can be divided into two groups - those belonging to any human and realized regardless of citizenship and those belonging only to the citizen of each specific State. In the second case, the political rights and freedoms, for example, the right to vote and to be elected, etc., is mainly realized by the citizens of a State.