

# **THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS: THE PROTECTION OF INDIVIDUAL RIGHTS IN THE AGE OF GLOBALISATION**

Mohammad Jasim Uddin and  
Md. Fazlul Halim\*

## **ABSTRACT**

*The European Convention on Human Rights and Fundamental Freedoms is considered as the premier document, which offers the highest degree of protection of individual rights. Since 1953, the Convention has been playing an important role to understand the issues of individual human rights. By contrast, the developments of globalisation have added a number of challenges in the context of individual rights. However, the development of the concept of individual human rights in Europe has taken a long process of evolution. Therefore, the objectives of this paper are to evaluate the evolving process of individual rights in Europe, and to examine how far the European Convention on Human Rights and Fundamental Freedoms is addressing the emerging realities of globalisation.*

## **INTRODUCTION**

The European Convention on Human Rights and Fundamental Freedoms is an arrangement made by the Council of Europe in 1950 to protect individual rights for the European democracies committed to

---

\* Mohammad Jasim Uddin is Research Fellow of Bangladesh Institute of International and Strategic Studies (BISS). Md. Fazlul Halim is a Lecturer of Department of International Relations, Jahangirnagar University. Authors are grateful to Conor Gearty for his writing *Human rights in the age of globalization: the challenge of growing up*. Since, the Section titled *Retrospect and Prospect of the European Convention Link to Individual Rights in the Age of Globalisation: An Evaluation*. This article has incorporated many ideas from, alongside others, Conor Gearty.

the rule of law.<sup>1</sup> The Council of Europe was formed as a process of restructuring Western Europe in the aftermath of the Second World War. The Council has particular emphasis on legal standards, human rights, democratic developments, rule of law and cultural co-operation. It consists of 47 member states with some 800 million citizens. There is also a European Court of Human Rights (ECHR) known as the most thriving organ among the international human rights institutions, whereas the European Human Rights Convention is known as the most successful arrangement of the European Council. Moreover, the Convention has articulated institutional frameworks for protecting and promoting human rights mechanisms, and particularly to define individual rights.

The idea of individual rights in Europe is linked with the collapse of feudalism in the European society. The contributions by the philosophical thinkers developed the idea in Europe that the protection and promotion of individual rights is a prerequisite for the development and progress of every human being. The historical experiences of war and conflict also gave rise to an understanding in the European society that the violation of individual's rights creates a permanent threat to everyone. The motto of the French Revolution, *Liberty, Equality and Fraternity* also reminded that every human being should be considered equally and everyone has an equal right to get equal benefits and protection. Besides, the catastrophic experience of the Second World War reinvigorated a new urgency in Europe to enhance a mechanism that can eventually protect individual rights. This is because of the fact that the experience of the War engendered the idea that without furthering and securing individual rights, Europe might have to experience another cataclysmic danger in future. The developments and experiences aforesaid gave rise to the Universal Declaration of Human Rights (UDHR) in 1948, and widened the rubric of the philosophy of human rights. However, the document with a lack of implementation mechanism attracted little attention from the Europeans. Therefore, the European Convention on Human Rights and Fundamental Freedoms that elaborates and institutionalises the issues of individual rights and its protection mechanisms was established.

---

<sup>1</sup> The Convention is formally known as the Convention for the Protection of Human Rights and Fundamental Freedoms. It came into force in 1953.

Since the formation of the European Convention, it has been playing a significant role to protect individual rights. The Council of Europe has taken substantive legal and institutional measures in this regard. The developments of globalisation have extended new understandings about individual rights. The traditional understanding of individual rights as a State responsibility has been shifted towards supra-national as well as a global responsibility. In the era of globalisation, individuals are not only associated with States, but also interact with a wider world as global persona. In this new supra-state political set up, the issues of protecting individual rights are facing challenges from the emerging realities of globalisation. The objectives of this paper are to evaluate this evolving process of individual rights in Europe, and to examine how far the European Convention on Human Rights and Fundamental Freedoms is addressing the emerging challenges of globalisation.

#### **DEVELOPMENT OF THE CONCEPT OF INDIVIDUAL RIGHTS IN EUROPE AND THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

In Europe, the contemporary concept of individual rights is defined as follows: ‘prima facie everyone has an equal legitimate claim to those tangible and intangible goods and benefits most essential for human well-being’<sup>2</sup>. However, Europe takes sufficient time to deem every human being equal. While feudalism considers rights as ‘obligations attached to tiers of a fixed social hierarchy (e.g., natural and God-given)’<sup>3</sup>, liberalism gives emphasis on new theories of social order and authority. The theory of ‘social contract’ given by John Locke<sup>4</sup> reveals that everyone has natural rights to defend his ‘Life, Health, Liberty or Possessions’. The concept of individual rights was influenced by such philosophical thoughts and also many political developments in Europe. For example, the Habeas Corpus Act of 1679 recognised liberty for the individuals, and rights to secure them from the State oppression without any legal process. Conversely, the English Bill of Rights 1689 entitled as An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown provided individual freedom from arbitrary administration. Thoughts of Thomas Paine persuaded the

---

<sup>2</sup> Greer, Steven., *The European Convention on Human Rights: Achievements, Problems and Prospects* (ed.), New York: Cambridge University Press, 2006, at p. 2.

<sup>3</sup> Ibid., at p. 2.

<sup>4</sup> The pioneer of the idea of liberalism in Europe.