CHAPTER 1

INTRODUCTION
The issue of rights is invariably linked up with the social life of every individual as a moral agent, for the rights of any sort are basic to civilized human existence. The most basic of all rights is the right to life. In the absence of such a right, all other rights granted to the individuals are otiose. Rights in general are claimed and enjoyed by the people as their entitlement to certain objects or privileges or interests they have or what they want to have and to be, to protect and promote basic human dignity. Societies in general are formed to ensure the extension and protection of rights to all the members of society through their laws, constitutions, and institutions. Therefore, the purpose of social institutions is to see that no member in the society would ever meet with any form of injustice. Consequently, the states derive their supremacy or authority over the society from their responsibility to protect these rights in the interest of its subjects (people).

When we look back the past, the language of rights exerted tremendous power to influence any public action to compel the authorities or the rulers or the nation states, to protect the rights of the individuals. Although the non-violation of rights may not amount to promoting the rights, at least they are protected by not violating them. For instance, whether it was for Magna carta, or for the American war of Independence or for the French Revolution, the rights were formulated essentially as negative rights with a view to preventing the authorities from interfering with or preventing from the enjoyment of these rights. In a way these rights are equated with
freedoms that were considered basic to human dignity and which were threatened by the possible actions of the authorities against their subjects. In fact, the American Declaration was very specific and categorical about the rights to be enjoyed by the people by which to rebel against and over-throw the state, if the state failed to ensure and guarantee the enjoyment of these rights (freedoms). It was also considered to be a right (freedom).

What is a right? Some philosophers have attempted to characterize rights in terms of normative categories like duties. According to them, a right is just a duty seen from another perspective. Thus Bradley, Ross and, recently Benn, Peters and Brandt - all agreed with Austin that ‘every right ... rests on a relative duty... lying on a party or parties other than the party or parties on whom the right rests.’ This right-duty correlation may act in two ways. If someone has a right, other individuals must have the duty of satisfying the claim that is recognised by that right. If the child has right to education, his parents have the duty to provide him with that education. If the railway company has the right to be paid, the passenger has the duty of buying tickets and paying the proper fare. Thus the difference between A’s right against B and B’s duty to A is only the difference between the passive and active voice.

Wesley Hohfeld argues that a right is not only a claim, but also a liberty, a power or immunity. Richard Wasserstrom and H.J.Mcctoskey have characterized rights as basic moral entitlement
possessed only by persons. In the words of Mctoskey, rights are explained positively as entitlements to do, have, enjoy, or have done and not negatively as something against others, or as something one ought to have. In this work, I propose to highlight the concept of ‘right’ as advocated by Hobbes, Locke, and Rousseau in their respective social contract theories.

Hobbes began the explanation of the social contract theory by examining man’s nature. He emphasized that the state was created by human being and not by any divine force as stated by the theory of divine origin. According to Hobbes, the state came into existence through a contract. During Hobbes’s time civil war was underway in England. So, we can say, his social contract theory is a bye product of the social conditions of his time. Hobbes stated his social contract theory with the assumption that all men are selfish. Selfishness and self-preservation are the key expression in his social contract theory. On the basis of his assumption, he deduced that people will exercise their rights, if they have unlimited rights, to fulfil their selfish desire. Hobbes imagined that if people have unlimited power, then they will never have control over their desires. Everyone in the state of nature would expect fame and name. In order to achieve their twin objectives, namely, fame and name, they quarrel with each other. This competitive attitude among men leads to perennial war of all against all. In such circumstances everyone exercises his freedom to anything for his own benefit. This results in
the constant fear of violence and death among the members living in
the state of nature.

In the state of nature, there existed natural laws and the
natural rights. Hobbes, however, clearly distinguished between
natural rights and natural laws. He is of the view that the natural
rights of men are based on their selfish views and if strictly and
closely followed these were the basis of war. On the other hand,
natural laws would positively lead to peace and avoid war. With
natural rights, men could struggle to preserve what they had with
them; whereas on the basis of natural laws men gave up some of
their rights in order to have sure realization of rights of all. The
natural laws, according to Hobbes, are immutable and eternal. In fact
the credit goes to Hobbes for distinguishing the former from the
latter. The laws of nature (natural laws) are based on reason. On the
contrary, the natural rights gave men all rights to what they wanted.
There is no authority either to protect or enforce the laws or rights
and so it is meaningless to talk about these natural laws.

Since self-preservation is the motive of human beings, they
would have to face a war of all against all. Thus, the condition of
state of nature is very bad. He imagined that people couldn’t tolerate
the ill nature of state of nature for a long time. In order to escape
from the ill condition of state of nature, people entered into a
contract among themselves. Through this contract, everyone
surrenders all his natural rights to a sovereign in order to establish
the society, state and government. Prior to the contract, people in the state of nature had enjoyed unlimited natural rights. These rights are those rights that are bestowed by the nature on human beings. These rights are not legally recognized rights. So, people can exercise these rights the way in which they want to exercise. In order to control the misuse of these rights by their fellow beings, people entered into a contract. This resulted in the surrender of their natural rights to the sovereign. After their surrender, people started enjoying only limited rights. They are the rights that are not surrendered while entering into the contract, and those rights that are granted by the sovereign. Thus sovereign monitors the activities of the individuals within the framework of these limited rights enjoyed by them in the state. Having entered into a contract with the sovereign, people must defend the sovereign. As rightly assessed by Macpherson, Hobbes derived the political obligation (social contract) from the individual natural rights. As indicated above, the transfer or surrender of individual natural rights to the sovereign produces political obligation. At the same time he points out that Hobbes's conception of natural rights is so different form other thinkers. The classification of natural rights entails an obligation of other men to respect them. In other words, reciprocal obligation is needed. Such a thing is excluded in the natural rights theory of Hobbes. This is evident from Hobbes' interpretation of natural right that everyone has a natural right to do anything, to take anything, to possess, use and enjoy anything, to invade any other person. This amounts to saying that no one has any obligation to respect any other man's
natural right. In other words, it is no better than having no right to anything.

Hobbes's social contract theory possesses some inherent weaknesses. First of all, contract will not or cannot give or guarantee freedom to the individuals for it becomes a hidden bond of slavery. Thus men fail to exercise their liberty. Secondly, if the ruler is proved to be corrupt, people will fail to protest for fear of death and absence of unanimous consent. Hence, people would be helpless in replacing the sovereign power. Thirdly, his theory is legally unsound because generally contracts can be made between two or among more parties, but Hobbes's contract involved only one party, namely, the people. The sovereign is not a party to the contract. Thus, the ruler is beyond the contract.

Laws of nature have a very important role to play in the political theory of Hobbes. He borrowed this concept from Grotius. In the state of nature, according to Hobbes, people enjoyed natural rights. The natural right (jus naturale) is the right to do anything for one's own self-preservation. The Laws of nature on the contrary is a sort of restriction imposed on the individuals not to exercise their natural rights without reasoning. The natural rights which men had in the state of nature paved the way to war, violence and insecurity. The natural law is a general rule found out by reason, by which, man is forbidden to do whatever he like and anything destructive to life, led him to form a civil society.
Hobbes's concept on liberty of subjects is derived either from nature of the social contract or from the commonwealth. The liberty of subjects is confined to those things that are left out in the original contract, and also to those things that are not forbidden by the sovereign. Hobbes created a boundary for the liberty of the subjects within which the subjects have to enjoy their liberty. The subjects do not possess natural liberty for they have to surrender themselves before the sovereign. Therefore, the liberty of the people is at the mercy of the sovereign. Because of the limitations imposed on the liberty of the people, sometimes the people have to tolerate the highhandedness of the sovereign. These demerits inherent in the social contract theory of Hobbes necessitated Locke to propose a better social contract theory by which the people enjoy their natural rights in their fullness.

John Locke identified the shortcomings in Hobbes’s social contract theory and aimed at providing a better social contract between the people and the ruler, so that the people can enjoy their natural rights in their fullness. He started with the assumption that human beings are basically good. Locke believed that before people entered into the civil state, they were living in the state of nature. Their life in the state of nature was peaceful. The people in the state of nature were neither nasty nor uncivilized nor brutish. They are not selfish as stated by Hobbes. They are capable, efficient, and considerate beings. Human beings are naturally endowed with certain basic instincts such as decency, goodness, and social
inclination. Also, they are capable of ruling themselves. He held that
man is social and rational being capable of leading a peaceful and
harmonious life in a society. Men are naturally able to govern
themselves by the law of nature, and reason. Their freedom is
governed on the basis of reason, which guides them how to govern
themselves.

Even though Locke’s state of nature was a state of peace,
good will, mutual assistance and preservation, yet people in the state
of nature try to come out of it for they anticipated that their natural
rights may become insecure because the law of nature needs an
authority to enforce it on the people. In the absence of such an
authority there is a danger of origination of some vicious, corrupt
and degenerate men who can mar the peaceful atmosphere in the
state of nature. In order to avoid such a consequence the people
prefer to enter into a social contract by which there would be a ruler
to enforce the natural law. At the same time the people realize the
fact that natural rights are reciprocal. The rights of one depend on
the activities of his fellow beings. If there is no mutual respect for
natural rights, then those rights would be reduced to a meaningless
exercise. This means that one common authority is needed not only
to enforce natural rights but also make the people recognize the
natural rights of others. In other words, one common authority is
required to control the activities of the subjects. In the absence of
common authority, Locke held that, men could not follow or
approach natural law. Laws of nature guide human beings in their
activities. Laws of nature are held by reason and conscience, which command that no one should harm others' life, freedom, and possession of others' property.

Thus, in the state of nature, the people were enjoying natural rights as well as laws of nature. But they realize the fact that their rights in the state of nature were unsecured. In order to protect their life, property and liberties, they made a contract. Consequently, they decided to enter into a contract among themselves. Locke held that people surrendered only a few of their rights and that it was only a limited surrender. They surrendered their right to the community and that too on the understanding that the natural rights will be guaranteed and preserved. The contract is between the community and the rulers by which the society authorizes the government to make positive laws.

Locke held that if the sovereign goes against the interest of the people, then they have the power to overthrow the government. According to him, the people had power, although not the right, to remove a government whose policies they find are curtailing their rights. He was of the opinion that the people had certain basic minimum rights and that no authority in the state had any right to snatch these rights from him. A state should bestow and not snatch rights. Locke also believed that law-making agency should not betray the trust reposed in it. As soon as there was such a betrayal the legislature was defunct for all purposes. Locke held that the
society as a whole has to decide whether the state betrayed their rights or not.

Locke had the viewpoint that the individuals are allowed to resist the state when their demands are not fulfilled. It is not possible to fulfil the demands of all the subjects. And, also the revolutionary ideas will originate only in the minds of minority. So, it would have a long time to propagate their ideas to majority then resistance would be possible. For Locke, ideas of the laws of nature are identified through reason and conscience. He held that all individuals are equal. It is only through this concept of equality the rights such as the rights to life, liberty, and property are derived.

The people already possessed some natural rights in the state of nature. It is only by means of a social contract people created a state for the purpose of making their life protected. Locke’s state is justified on the ground that its existence is only for making the rights more secure. The function of the state is very limited. It is to protect the individuals from those who violate their rules and regulations. This is how the state functions in the social contract theory of Locke. The individual is left to his own sphere of morality, intellect and education.
Locke's claim as natural rights of man is generally thought to be much clearer than Hobbes. The grounds for claiming Locke as a genuine natural rights man are: (i) His natural rights are presented as effective rights, the rights which others have a natural obligation to respect. (ii) His natural rights are meaningful and more specific. (iii) Locke used natural rights to establish a case for limited government, and to set up a right to revolution. In these respects Locke's natural rights are different from Hobbes' natural rights. The reason is that Locke derived his natural rights from natural law: it is reason, which obliges everyone to respect others' life, liberty and property, which establishes the rights and the corresponding obligations. Whereas for Hobbes, the natural rights are logically prior, and the natural law is derived from the natural rights.

It has often been pointed out that Locke's state of nature is a social state, that his natural man is a social man. Because Locke's natural man are capable of understanding the law of nature. And also they desire not only to preserve their lives, and not only had to maintain their comfortable living, but also to accumulate property beyond the amount required for such living. The natural rights of Locke's men are both less and more than the rights of Hobbes' men. Less in the sense that Locke's men are forbidden by the law of nature to invade the lives, liberties and properties of other man. More in the sense that they have a natural right to unlimited accumulation of wealth which others must respect. It is the law of nature that limits both men's natural rights and, by imposing
obligation on others to respect rights. This makes the rights more effective than that of Hobbes. In other words, law of nature taught everyone to respect others' natural right. If each and everybody is in a position of respecting others rights then the rights become more effective.

C. B. Macpherson raised the question that: Can either Hobbes' or Locke's concept of natural rights be of any use in formulating a twentieth century concept of human rights? He further stated that both Hobbes's and Locke's concept, natural rights, satisfy the minimum requirements of the theory of human rights. It is clear that any concept of human rights, which would be acceptable in the second half of the twentieth century, must meet at least two requirements. First of all, the rights must be in some effective sense equal. Equal in the sense that everybody must have an equal right to attain a standard of life by one's energies. Secondly, the rights must be rights of reciprocity as well as rights of action. If one carefully analyses the social contract theories of Hobbes and Locke it appears that neither Hobbes's nor Locke's view of natural rights meet these requirements. Hobbes's natural rights are absolutely equal, but they are not rights of reciprocity. This means, they meet the first requirement but not the second. In the case of Locke, natural rights are not really so. Because Locke held that most men do not naturally recognize other's rights. That is why they enter into a contract. Thus, Locke's natural rights do not meet the first requirement and only appear to meet the second requirement. The inability of Hobbes's
and Locke's theory to meet the two requirements is due to the basic postulation about the nature of man and society. Perhaps, this has become the target for Rousseau to propose his version of social contract theory.

Rousseau started his social contract theory on the basis of the assumption that all men are basically good. According to Rousseau, human beings are innocent, peace loving, and willing to lead a contented life. Their life is free, healthy, honest, and happy. Though they are not born with reason, they developed it at a later stage. Men, in the state of nature, were treated as equal, independent, and self-sufficient.

Rousseau imagined that the people would not lead the solitary, independent life. After sometime, they began to live with settled groups. This settled groups had some problems in order to preserve their own life. In order to protect their life, social institutions like private property, came into existence. He held that private property is the root cause of all the problems that human beings had to face in their life. Consequently, men were forced to create a society. Men came together and emerged with summed forces, and found a form of association, which can defend their life, property, and liberty. They create the society by surrendering their natural rights to sovereign. But the difference between these two thinkers is that Hobbes used the term sovereign in the sense of absolute monarch who is beyond the contract whereas Rousseau
used the term sovereign in the sense of a corporate body that includes all the members of the society who surrender their natural rights.

From this, we can infer the fact that all political thinkers, Hobbes, Locke and Rousseau, tried to advocate a better theory for the development of human beings. But, some demerits found in all these social contract theories. At the same time, these theories taught the political philosophers the importance of rights, namely, human rights. In other words, these theories initiated the importance of human rights in the minds of political philosophers. After the Second World War, political philosophers understood the importance / necessity of human rights.

Rousseau, the torchbearer of the industrial revolution, proclaimed that men were endowed with inalienable rights of liberty, equality and fraternity. With this clarion call, the fire of industrial revolution was kindled and blazed all over the European continent. Industrial revolution led to the blooming of capitalism and giving birth to fundamental rights in the State Constitutions. Before the World War I, the question of protection of minorities loomed large and feebly. It was accepted that international law is concerned not merely with states but also with individuals. After the World War I, the notion of fundamental human rights and freedom began surfacing.
In 1929, the Institute of International Law adopted a Declaration of International Rights of Man. It asserted that the rights of citizens laid down in several domestic constitutions were ordained not only for citizens but for all men. Article 1 of the Declaration laid down:

It is the duty of every State to recognize the equal right of every individual to life, liberty and property, and to accord to all within its territory the full and entire protection of these rights without distinction as to nationality, sex, race or language or religion.

With the outbreak of the World War II, the question of fundamental rights of man became much more important and loomed large.

The Philadelphia Declaration of the International Labour Organizations 26th session held that:

All human beings, irrespective of trade, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity.

The Dumbarton Oaks conference of 1944 among the four big powers led to the first tentative draft of a new world organization.

At Yalta Conference of 1945, the principles of Atlantic charter and Declaration of United Nations were affirmed.
The San Francisco Conference of the United Nations held on April 25, 1945 in which the charter of United Nations emerged. Thus, it is apparent that till the coming into force of the U.N. Charter, Human Right was expressed in pious terms in treatises. Prior to coming into force of the U.N. Charter, human rights movement was confined to abolition of slavery, humanitarian laws of warfare, and protection of minorities. Obviously, the United Nations did not consider this mode of guaranteeing human rights and expressed itself in favour of a Universal human rights charter.

The brutality committed by the Nazis and Fascists during the Second World War made it imperative for a World Organization to proclaim and advocate the protection of human rights. It was the great economic crisis of thirties that opened the eyes of the World that unless some economic and social rights were recognized, the political and civil rights would be sucked deep into the mire of economic crisis.

The United Nations Organizations was primarily concerned with evolving a mechanism to maintain international peace and security, yet it could not have failed to recognize problem if world was to be saved of another scourge of world war. Of no less importance was the recognition of human rights, civil, political, economic, social and cultural. It was an essential innovation in the sphere of international peace and security that importance was also
given to human rights. It was then fully realized that respect for human rights was intimately connected with the preservation of international peace and security.

On December 10, 1948, the General Assembly adopted the Universal Declaration of Human Rights.

The outstanding feature as stated in the Preamble is that the question of international peace and security is interlinked, rather interlocked, without the protection of human rights. Declaration is universal. One of the paragraphs of the Preamble states:

Whereas member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms.

It is universal as it is a declaration of all nations. Such a declaration has been accepted by all member-nations without a single dissent. This has happened in the international world from the first time. It is meant to serve as ‘a common standard for all nations’. Article 2 laid down: ‘Everyone is entitled to all the rights and freedom set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national,
social origin, property, birth or other status’. And, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent under trust, non-self-government or under any other limitation of sovereignty.

To sum up, the Declaration of Human Rights has not been conceived as law but as a common standard of human rights, which everyone, every state, should endeavour to achieve.

The present work is classified into four main chapters apart from introduction and conclusion. In the introduction an overview of the notion of ‘right’ is provided with a view to provide a historical survey of the concept of ‘right’. In the First chapter ‘Hobbes’ analysis of state of nature, natural law, and man’s nature is discussed with a view to highlight the way in which Hobbes treated the concept of ‘right’ in his social contract theory. The Second chapter deals with Locke’s criticism of Hobbes’ account to social contract and Locke’s view of social contract. This chapter not only analyses the way in which Locke tried to interpret the state of nature, natural rights, natural law, and man’s nature, but also the concept of ‘right’ advocate by him. The Third chapter highlights Rousseau’s commitment to social contract with a view to establishing social harmony and security to human life and personal property. Also, the way in which Rousseau tried to improve upon the social contract theory of both Hobbes and Locke is discussed. The Fourth chapter is
exclusively devoted to show how the concept of 'right' advocated in the social contract theories of Hobbes, Locke, and Rousseau leads to the much discussed modern conception of 'human rights' in detail. In the conclusion a balance approach to human rights is advanced with a view to reminding people that rights alone cannot guarantee freedom, justice and social harmony unless duties as obligations are taken very seriously. Rights as privileges and duties as obligations are the two sides of the same coin. What we call human rights is nothing but human obligations or responsibilities. At the end a detailed bibliography, which includes both primary and secondary sources, of the books consulted for the purpose of writing this thesis is given.