CHAPTER 1

Introduction
Chapter – 1

Introduction

The issue of human rights is of prime importance. There are sound reasons to discuss human rights along with considering the other critical world issues. Enlarging human rights and fundamental freedom for more people on this earth depends in part upon successful management of other global problems by the world community. Moreover, the status of human rights throughout the world is a yardstick for how well other critical issues are managed. The extent to which people enjoy human rights and fundamental freedom is related directly to the policies and actions of national governments which is the eyes of most of the world, exist to serve the needs of their constituents. Government rise or fall, albeit slowly at times, according to the way they meet vital human needs and enable their citizens to live with dignity. Ideologies and philosophies gain or lose adherents according to how they relate to actual or perceived human needs. Economic system remains viable only so long as people believe they are well served. Religions remain relevant only as they respond to human concerns. Human rights and fundamental freedoms are the cornerstone of civilization, the alpha and omega of humanity’s quest for better existence.¹

The core spirit of human rights can be traced back around the year 300BC. Philosophers then began to take an interest in the relationship that existed between the society, the state religion and the individuals that made up the city state. A group of people known as the stoics were the first people to emerge and discuss their perception of the word and the role or place of man. They claimed that human beings were the master of their own destiny: a person’s destiny did not depend on God. Stoics: (Greek) group of scholars; member of a school of philosophy founded by Zeno (308 BC) that all relations, properties are given by

unchanging laws and a wise man should be indifferent to the external world and to passion or emotion. The contributions of Plato, a philosopher, laid the foundation for the concept of a universal and external set of laws desired from and based on the dignity of the individual human being.²

The sophists later on developed the notion of a natural law. They claimed that there were two sets of laws; natural laws and man made laws. Natural laws were external and unchangeable and applied to the whole world. Man made laws were valid if only they agreed with natural laws.³

Christian philosophers like St. Thomas Acquinas (1224-74) furthered the notion of natural law. Natural laws were the laws set out in the ten Commandments and certain other laws of Moses; they are the laws of God. Man made laws are the laws made by men for their good governance.⁴

By the 17th and 18th century a group of people known as the Rationalist provided for what was to become the doctrine of individual rights. Rationalist based their thought on reason and logic. But to them natural laws were not subject to the will of God or laws as laid down by religious teachings. These thoughts were further developed in the doctrine of social contract. In fact, the concept of human rights has been evolved from the concept of natural rights which in turn were derived from natural law.⁵

The teaching of Acquinas (1224-1274) and Hugo Grotius (1583-1645) on the European Continent and certain declarations like Magna Carta (1215), the petition of right (1628), the English Bill of Rights (1689), the American

³ Ibid.
⁴ Ibid.
⁵ Ibid.
Declaration (1787) and the French Declaration of the Right of Man (1789) were giving a boost to human rights.\(^6\)

For providing a clear picture, the development of human rights and their recognition and protection on international level can be divided into different periods. These include:

(a) **Natural Law and Natural Rights in Ancient Times:**

Historically, the idea of Natural Rights is very old. In the classical literature of Ancient Greece from the 5\(^{th}\) Century BC, we come across a striking expression of the belief in the power exercised by the God in civil society based on law. According to Ancient Greece writers, the God establish a law which stand above the obligations and prohibitions imposed by the rulers of the community.\(^7\) In Roman law a distinction was made between national law and the law which is actually common to all nations. Thus, natural law was regarded as that law which the nature has itself established. According to Marcus Jullius Cicero, the Great Roman Jurist, there is one external and immutable law, which will apply to all people at all times and which emanates from the God is natural law. From man's essential nature, which is reason and which shares with God, Cicero deduced not only a common law, but also a common share of justice.\(^8\)

Despite the scarcity of information on Ancient Indian History, scholars have expressed the view that there was rich jurisprudence in ancient India. That jurisprudence provided an adequate framework for the regulation of the behaviour of ordinary persons as well as the sovereign, the King. Two norms, viz. Dharama and Danda, which were necessarily influenced by the theological texts of Vedic Aryans, contained several features of a regulatory mechanism for religious

---

practices. The King had the authority to implement this system and the law under it. But he himself was bound to follow the law, the norms laid down by religions codes and commentaries. Torture and inhuman treatment of prisoners were prohibited under Ashoka Adminisration.9 This indicates the traces of natural law and natural right in ancient India.

(B) Natural Law and Natural Rights in Middle Age

The concept of Natural Law was established during the middle ages in the works of Christian, Theologians, in the form of a belief in a law of God, and above all human laws. St. Augustine carried out the principle further and said that a law which violated justice was in principle invalid. St. Thomas Aquinas also noted the importance of Natural Law as defined this concept as the participation in eternal law of mind of a rational creature. The state is subject to the higher law which determines the relation of the individual to the state. He further stated that the justification of the state is in its service to the individual. A king who is unfaithful to his duty forfeits his claim to obedience.10 This idea led to the establishment of doctrine of natural rights and by the end of middle-ages the concept of natural rights of man becomes well established. All this led to the formation of right to revolt against a tyrannical ruler. According to Jean Bodin, Tyrannical monarch is one who violates the freedom of his subjects, trampling the laws of nature beneath his feet.11

In middle ages, number of acts were enacted to show the superiority of Natural Law and Natural Rights. The principle of the Habeas Corpus Acts latent in the 39th Clause of Magna Carta was acknowledged already in 1188 by Alfonso IX at the Certes of Leon. The great charter of the liberties of England or the Magna Carta of 1215 was imposed on King John by the prelates, Earls and Barons of his realm after his defeat by the King of France in 1214. The Golden

10 D.R. Bhandari, History of European Political Philosophy, Delhi: Viking, 1956, pp. 119-122.
Bull issued in 1222 by King Andrew II of Hungary is couched in language strikingly reminiscent of that used in Magna Carta. So is the law of general privileges granted in 1283 by Peter III of Aragonete.\(^1\)

**C) Natural Law and Natural Rights in 17\(^{th}\) and 18\(^{th}\) Century**

Teaching of Machiavelli which dominated politicians and jurists of 16\(^{th}\) century set in a wave against Natural law. But soon after two factor combined to revive and strengthen the idea of natural rights of man. First factor was religious tolerance which brought forth the insistence on the natural rights of freedom of conscience and religious belief. Second factor which helped to keep alive the idea of natural rights was the theory of social contract, which of course, started in the middle ages but became more predominant by the beginning of the 18\(^{th}\) century. The very notion of the social contract, implied the existence of rights which the individual possessed before entering organized society. The contribution of Hugo Grotius, Vattel, Pufendor and Wolff in the development of the concept of natural are commendable. These germs of rights were also nourished by Hobbes, Locke and Rousseau. They advocate the rights as natural rights.\(^1\)

The Virginian Declaration of Rights of 1776; other similar constitutional enactments; the constitutions of New York and of New Georgia of 1777; and that of Massachusetts of 1780; the declaration of Independence of 1776; and the Bill of Rights in the form of the first ten Amendments to the Constitution of America; the declaration of the Rights of man and of the citizen adopted in 1789 by the French National Assembly and prefixed to the Constitution of 1793 and 1795, all these expressly acknowledged the inherent rights of man. These were the first step to desire human rights from natural rights.\(^1\)


\(^{13}\) Ibid.

\(^{14}\) Ibid.
(D) Natural Rights and Doctrine of Humanitarian Intervention in 19th Century

At the turn of the Century after the French Revolution the doctrine of Natural Law was a doctrine of abstract and immutable principles and of eternal and inviolable human rights. In England Burke launched his attack against the assertion of the Natural Law doctrines. In Germany, reaction against the Philosophy of Natural Law emerged with “Historical School” of jurisprudence. But we come across the occasions, in this century, on which the doctrine of ‘humanitarian intervention’ has been involved on behalf of national or inhabitants of foreign countries. Such, for example, was the intervention in 1827 by Great Britain, France and Russia on behalf of Greek Revolutionaries, the numerous intervention protecting Turkish Treatment of Armenians and other Christians, and the protest by the United States 1891 and 1905 against antisemitic outrages in Russia.

From the beginning of the 19th Century, attention was directed more to the rights of the individual than to the objective norms. But nation states have persistently claimed supreme authority over all persons within their respective territories. As a consequence, subject to permissible exceptions, relation between a nation and its subjects according to traditional prescriptions are a matter of ‘domestic’ concern of law, not covered by rules of International Law. Under this prescription, therefore, an individual cannot claim international agreements he has no locus standi before an international court for demanding redress of grievances against the violation of rights by his home state. It is pertinent to note here that inspite of the inadequancies of traditional international law, an increasing number of treaties were entered into the purpose of which was to protect the rights of

certain classes of persons. These developments of 18th and 19th Century led the culmination of the idea of human rights. 17

(E) Concept of Human Rights in 20th Century

Great importance has been attached in the 20th century to the human rights issues in the international arena and tremendous efforts have been made through the formulation of new principles and procedures to transfer the protection of basic rights from the hands of nation states to an authoritative superannuation organization. The uncomprising acceptance of the principle that all men are born free and equal in dignity has emerged as the most valid of all working hypothesis of human relations. By the end of First World War, apart from political and civil rights developed the concept of economic, social and cultural rights. The idea that workers needed special safeguard was a beginning to take hold in many industrial countries. Labour unions were established and the right to collective bargaining wages were being increased; and working hours being reduced, and the idea that citizens had certain basic economic and social rights had been recognized in constitutions and legislation of democratic states. The roots of human rights can be found in most of the world's religions and philosophies. Some cultures emphasis the human rights of the individual person and the others the rights of the group like clan, tribe or community. In spite of the cultural difference that exists, there seems to be general agreement about certain basic values. These basic values include respect for human life and human dignity.

Because of the cultural diversity in different countries, it is sometimes difficult to formulate a set of rights accepted by all people as human rights. Therefore, to solve this problem and to protest against the terrible atrocities which had occurred during world war second, members from different nations representing all political system and geographical areas met together to write the

Universal Declaration of Human Rights. This declaration was adopted by United Nations General Assembly on 10th December, 1948, by the resolution 217-AIII. It includes civil and political, economic; social and cultural rights and fundamental freedoms to which every human being is entitled.\(^ \text{18} \) As a statement of goals and principles, the Universal Declaration was a giant step. Although a declaration does not have the binding force of a treaty, the UDHR has acquired universal acceptability. Many newly independent countries have cited the declaration or included its provisions in their basic laws constitutions and many human rights convenants, conventions and treaties concluded since declaration have restated its principles.\(^ \text{19} \)

It is well said, the central characteristics of the twentieth century, what so profoundly democrats it ideologically from previous centuries, it that a world in which obligation were taken for granted has been transformed to one in which rights are presumed to be inalienable.\(^ \text{20} \)

### 1.2 Meaning and Definitions of Human Rights

The term 'Human Rights' is comparatively recent in origin, but the idea of human rights is as old as the history of human civilization. The term 'Human Rights' was adopted only in the last century from the expression previously know as 'Natural Rights' or 'Rights of Man'.

The dictionary meaning of the expression would be (Human = Pertaining to mankind, Rights = according to truth and justice) dealing with mankind according to truth and justice.

---


\(^ {19} \) *The Universal Declaration of Human Rights*, New York: UN Department of Public Information, October 1993, p. 9.

The word 'Right' in the most general sense means that it is something to which we are entitled. This entitlement is due to various factors such as law, customs and morality.\textsuperscript{21}

There are still divergent views and perceptions about the meaning and nature of human rights. As the concept of human rights is a complex and contradictory one. It is desirable to go through some of the standard definition offered by different scholars from time to time.

**Professor Hob House,** "Rights are what we expect from others and others from us and all genuine rights are conditions of social welfare. Thus, the rights everyone may claim are partly those rights which are necessary for the fulfillment of the function that society expects from him. They are conditioned by co-relatives to his social responsibilities."

Protection of Human Rights' Act, 1993 has defined the term 'Human Rights' under Section 2(D) as follows:

"Human Rights means, the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in international covenants and enforced by courts in India. A perfectly plausible definition of the term ‘Human Rights’ would be that they are the rights that everyone has, and everyone equally, by virtue of their humanity. They are grounded in our appeal to human nature.\textsuperscript{22}

### 1.3 Definitions of Human Rights

According to **D.D. Basu,** "The expression human rights had in international law relating to the development of the status of an individual in the international legal system, which was originally confined to the relation between sovereign states, who were regarded as the only person in international law. For all practical purposes, the genesis of human rights is not older than second World

\textsuperscript{21} A.R. Mahapatra, *op. cit.*, p. 17.
\textsuperscript{22} J.C. Johri, *op. cit*, p. 5.
War though the concept of individual having certain inalienable rights as against state had its origin in the past. Thus, the concept of human rights, embodying the minimum rights of an individual his own state is as old as political philosophy.” Hence, he defined human rights, “are those minimum rights which every individual must have against state or other public authority by virtue of his being a member of human family, irrespective of any other consideration.”

Justice V.M. Tarkunde said that the term human rights in its normal usage, comprises the rights of the individual in all spheres of social life. They are exercisable by the individual against those who possess political and economic power and also against harmful social customs as untouchability in India, racialism in South Africa and inequality of women in all parts of the world. The recognition of rights in individuals also marks the recognition of certain social obligations on them. Since individual freedom can be experienced only in moral society, the rights and duties of the individual are necessarily interconnected. Freedom and morality are the two essential components of a healthy society.

Dr. Upendra Baxi says that for the first time in recent history, we move from conceptions of rights as resources for individuals against state power to a conception of human rights as species rights as well. And it is natural to this conception that the rights stand addressed not just to states but to international organizations as well, whose major world-historical role, all said and done, is to enunciate new human future through a reconstruction of human person whose loyalties are global or planetary. Transcendence of state sovereignty where it matters for mapping new trajectories for alternate human futures, can only be achieved by retooling the notion of human person, the bearer not just of the benefits but also the burden of human rights and fundamental freedoms. It is for

---

this reason that the preamble lays such powerful stress on the centrality of the human person.25

**Mr. M.C. Bhandare** considers that the urge for the protection of human rights emanated out of the gross violations preceding and during the two world wars of the century. The protection of human rights, one of the war aims of the allies in the Second World War, was translated in to reality with the formation of the United Nations. It was realized that only international protection and promotion of human rights can achieve international peace and progress. Thus, in the Atlantic Charter of 14 August, 1941, subscribed to and endorsed by 47 nations, the President of the United Kingdom expressed the hope, "to be established a peace which will afford to all nations, the means of dwelling in safety within their own boundaries and which will afford assurance that all the men all the lands may live out their lives in freedom from fear and want."26

According to **Scot Davidson**, "The concept of human rights is closely connected with the protection of individual from the exercise of state, government or authority in certain areas of their lives, it is also directed towards the creations of social conditions of the state in which individuals are to develop their fullest potential."27

**Mr. Justice M.H. Beg** former Chief Justice of India while defining human rights said that human rights imply justice, equality and freedom from arbitrary and discriminatory treatments: These cannot be subordinated to the interest of the rulers. No one can be subjected to coercion for holding particular religious beliefs. The doctrine of national sovereignty cannot justify violation of human rights.28

**Paul Sieghart** has stated, the distinction between human rights and other rights give rise to three consequences. The human rights are not acquired, nor can

---

they be transferred, disposed of or extinguished by any act or event because those rights are inherent universally in all human beings. The primary co-relation of duties in connection with human rights falls upon the state and their public authorities. Because of these two distinctions, says Sieghart, three consequences follow. One is non-discrimination between individuals belonging to different groups, second is the rule of law whereby people are governed by law and not by men; and thirdly there are remedies available for the violation of human rights. If these three tests are applied, one must say that nation has come a long way towards the realization of human rights. But there is still a long distance to be covered, before we can say that we have done all that is possible.29

Goving Mukhoty described that human rights cannot be evaluated in isolation. They have been read in their social context. The theory of human rights incorporates following 3 maxims: (i) “The God who gave us life, gave us liberty at the same time” by Thomas Jefferson, (ii) “ Freedoms come from human beings, rather than from laws and institutions” by Clarence Darrow, (iii) “The history of liberty is the history of resistance…. history of the limitations of governmental powers” by Woodrow Wilson.30

Nani Palkivala’s viewpoint that the case for human rights is so strong that it almost argues itself. It is an instance of what lawyers call res ipsa loquitur – the thing speaks for itself. To attempt to define Human Rights definitively, would be merely to illustrate how the human mind tries, and tries in vain, to give a more precise definition than the subject-matter warrants. Human Rights may be summed up in one word – Liberty. But Isaiah Berlin noted that there are more than 200 definitions of liberty; and, as Abraham Lincoln observed, the world had never had a good definition of liberty.31

Mr. Soli J. Sorabjee has opined about human rights that protection of human rights of individuals, an abiding concern of every civilized state, assumes

30 Ibid.
vital importance in the time of emergency when there is invariably vast concentration of power in the executive and considerable dilution of safeguard which ensure protection of fundamental rights. Suspension of human rights is a concomitant feature of emergencies, violation an inescapable consequence.\(^{32}\)

**Justice Nagendra Singh** of International Court of Justice opined that respect for the human personality and its absolute worth, regardless of colour, race, sex are the very foundation of human rights. These rights are essential for the adequate development of the human personality and for human happiness and progress. Human rights may therefore be said to be those fundamental rights to which every man or woman inhabiting any part of the world should be deemed entitled merely by virtue of having been born a human being.\(^{33}\)

**Justice Rang Nath Misra**, Former Chairman of National Human Rights Commission of India, has observed that it is an obligation which all of us have to perform. Man, wherever he lives, whatever religion he professes, whatever food he takes, is a member of one family. All of us must learn to live like a member of one family. The whole world is one family. In the absence of Human rights, individuals and families are disintegrating in the modern era. Every one must realize that what is prescribed by law is not for next man, or the man to follow, but for you.\(^{34}\)

**Dr. Shankar Dayal Sharma**, the then President of India described about human rights as follows:

It is important that, from very early times, thinkers and law makes in our country had arrived at an extremely clear, specific and comprehensive understanding of the essential elements having a fearing on the life of the individual and his position is society, and also of the desirable relationship between the state and the individual. The most ancient literature that humanity

\(^{32}\) Ibid
possesses today – the Rig Veda – reveals the enlightened and refined treatment of key issues of importance to human beings – even in advanced stages of development of human society.\(^{35}\)

**UN Secretary General Ghali** described that human rights may be said to be rights that are inherent in people by virtue of being human beings, the rights that are absolutely essential for full and complete development of human personality. Generally, two categories of human rights are recognized, namely, civil and political rights and economic, cultural and social rights. However, third category has also come up but has a yet not been fully established that includes rights to development, right to common heritage of mankind etc. These rights have been forcefully advocated by developing countries.\(^{36}\)

To sum up, Human Rights are entitled. These entitlements are due to various factors such as law, custom and morality. It then becomes difficult to dissociate man from his entitlement. It is through the right that he asserts, expresses and manifests his own self. These entitlements, which he must claim are known as rights. It becomes the duty of the state to respect and safeguards various rights of individual.

### 1.4 Theories of Human Rights

In order to gain the basic understanding of human rights one should look at certain theories of the subject so that the shifting priorities of rights during different phases of history could be observed.

#### (1) The Theory of Natural Rights

This is the earliest theory of rights and its origin can be traced back to the ancient Greeks. According to this theory, rights belong to man by nature and thus are self-evident truths. They are considered as inborn-absolute, pre-civil and according to some, even pre-social. This theory provided the base for English,
French and American revolutions. Thomas Paine, Grotius, Tom Paine, John Locke, Rousseau, Hobbes are the main exponents of this theory.\(^{37}\)

(2) The Legal Theory of Rights

This theory is a reaction against the theory of natural rights. Advocates of this theory argue that the ideas of natural law and natural rights are abstract and ridiculous phenomena. John Austin and Jeremy Bentham are the main profounders of this theory. According to them rights are purely utilitarian concepts and thus the rule and regulations are necessary for the identification and protection of one’s rights.\(^{38}\)

(3) The Anti Utilitarian Theory of Rights

Profounders of this theory argue that the priority of the well-being of the majority, as stated by the utilitarian, the prime objective of the state. Amongst them Dowrkin, Nozic and John Rawls are the leading ones. They hold the view that there has to be proper reconciliation between the well-being of the majority and individual well-being for the better enjoyment of social and individual rights. Today, the demand for rights to development on international fora is perhaps the manifestation of this theory.\(^{39}\)

(4) The Legal Realist Theory of Rights

The legal realist theory of rights is of recent in origin. It mainly originated in USA with the expansion of regulatory activities followed by President Roosevelt’s “New Deal Policy”. Jurist such as Karl Llewellyn, Roscoe Pound considered rights as the end product of both the interaction of prevailing moral values of the society as well as the broad-based international sharing of values, so human rights are nothing but a manifestation of an ongoing process rather than theoretical debate. This theory questions the shortcomings and ineffectiveness of

---

the existing law but does not prescribe any solution in the form of super-value of a human being.\textsuperscript{40}

(5) The Marxist Theory of Rights

Rights according to Marx are simply a bourgeois concept and a product of bourgeois capitalist society primarily designated to maintain reinforce the predominant position of the ruling class.\textsuperscript{41} He regards the state a coercive agency to uphold the particular type of social organization and law is a tool of the state that perpetuates and safeguard the interest of the dominant group of society. Karl Marx firmly believes that rights can exist and flourish only in a classless society where all are equal and no one is an exploiter. The contribution of Marxist thought to the development of international concern on economic, social and cultural rights has been found in the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966.\textsuperscript{42}

To sum up, "There is not a single theory which can adequately explain the origin and nature of rights. Each theory is the product of its own time. But there is one eternal truth that individual good and social good go together. Society is an organic unit and welfare of the community is built upon the welfare of the individuals, both go hand in hand."\textsuperscript{43}

1.5 Classification of Human Rights\textsuperscript{44}

Human Rights can be broadly classified in two different perspectives; Firstly – from the perspective of various aspects of human life – social, economic, political, moral and civil, Secondly, from the perspective of the methods of securing them. On the second basis, they are constitutional or legal. These classifications are as follows:

\textsuperscript{40} Ibid, p. 21.
\textsuperscript{44} Arun Roy Mahapatra, \textit{Op. cit.}, pp. 22-23.
(1) Natural Rights: Natural rights are considered to be inherent and integral to human nature. Every individual by nature is given an individual property of his own which cannot be taken away by any authority. Such rights include intellectual rights, rights of the mind and also rights of acting as an individual of his own comfort and happiness, provided they are not injurious to the natural rights of others.

(2) Moral Rights: These rights are based on the general principles of fairness and justice. These are simply aspirations and ideals of the people who claim for it. Sometimes, people justify these rights on the ground of the role they perform or the position they occupy in society.

(3) Fundamental Rights: These rights are more important and basic than the others. These rights can never be restricted or taken away by any authority. That is why, every society has a fundamental duty to protect it all times.

(4) Legal Rights: These rights laid down in law so guaranteed and protected by the law of the state. Legal laws are uniform and open to all irrespective of the state, colour, race or culture.

(5) Civil and Political Rights: Rights that are granted by government or civil society are called civil and political rights. These rights are necessary for the free and progressive life of man.

(6) Economic, Social and Cultural Rights: These are entitlements of the individual vis-à-vis the state, in order to eradicate social inequality, economic imbalances and to limit disadvantages caused by nature, age and so on. These rights, however, are bestowed by the state. Socialist state recognize these rights as fundamental rights of the people.

1.6 Development of Human Rights Concept in India

It is interesting to note that the concepts of human rights are neither entirely western nor modern. Riga Veda cites three civil rights, that of Tana
Mahabharata tell about the importance of the freedoms of the individual in a state. Concept of Dharma, rights and duties of individuals, class, communities and castes have been defined in our scriptures. Before second century B.C. Indian states could boast of elected kings. Arthasastra elaborates on civil and legal rights first formulated by Manu, which also included economic rights. During Bhakti Movement human dignity and equality found due respect in every section of society when British ruled India, resistance to foreign rule manifested in the form of demand for fundamental freedoms and civil and political rights for people. The Indian National Congress, which was in the Vanguard of freedom struggle, took the lead in this matter.45

The constitution of India Bill 1895 prepared by Indian National Congress, also known as ‘Home Rule Document’, talked about a constitution guaranteeing every one of citizens basic human rights like freedom of speech, expression, inviolability of one’s own home, right to property, equality before law etc. In August 1918, Indian National Congress demanded incorporation of Declaration of the Rights of the people of India as British Citizens. It demanded interalia, guarantees of equality before law, protection in respect of liberty, life and property, freedom of speech and press and right of association. In the Delhi session of December 1918, Indian National Congress included the principles of self determination as one of the basic rights.46

Constitution of the Irish Free State 1921 included a list of fundamental rights. This has profound influence on the thinking of the Indian National Congress, which in 1925 finalized the draft of commonwealth of Indian Bill embodying a declaration of rights. Madras Congress of the INC in 1927 demanded incorporation of a declaration of fundamental rights in future constitutional frame work. A Committee under Motilal Nehru was appointed Reporting in 1928, the committee declared that the first concern of the people of

46 Ibid., pp. 9-10
India is to secure fundamental rights. It is interesting to note that the constitution of the Republic of India enacted in 1950, incorporated ten of the nineteen Rights enumerated in the Motilal Nehru Committee Report. Lahore Session in 1930 declared freedom from foreign rules as a fundamental right. Karachi Congress passed a resolution in 1931 on fundamental rights and social change. The Government of India Act, 1935 (Section 297-300) incorporated certain rights with built in exceptions. Sapru Committee in 1945 stressed on the need for written code of Fundamental Rights. In the Constitution Assembly (1946), there was a demand for declaration of fundamental rights. Promulgation of the Constitution by the people of India in January 1950 as a watershed in the History of Development of the concept of Human Rights in India. The Preamble, Fundamental Rights and the Directive Principles of State policy together provide the basic human rights for the people of India. Democratic socialism spelt out in the preamble and the directive principles are meant to provide the context in which the fulfillment of Fundamental Rights has to be achieved. While fundamental rights stress on the existing rights, Directive Principles provide the dynamic movement towards the goal of providing Human Rights for all.47

India is a parliamentary democracy with a free press, civilian controlled military, independent judiciary and active civic associations. Competitive Elections produce regular changes of leadership at the national, state and local levels. The state governments have primary responsibility for maintaining law and order. However, the central governments provides guidance and support through use of national paramilitary forces in law, has ultimate responsibility for protecting the human rights.

Despite Extensive Constitutional and statutory safeguards, significant human rights abuses persist through out India. In the one hand, we are spending billions to send satellites to space to prove our scientific prowess; on the other hand, the state cannot provide almost half the population with the basic

necessities of food, education, health and shelter. On the one hand, our scriptures put the women on a high pedestal. Where they are held in reverence there do the Gods reside, is an old Sanskrit adage. A society grow if the women grow, if they partake of the spirit of progress, for they are proverbial domestic legislators, they are the matrix of social life.\textsuperscript{48}

Free India in its first important legislative document – the constitution declares its faith in the equality of men and women as a pre-condition to ushering in a society where there would be justice, social, political and economic rights for all. However, more than 58 years after the solemn resolve to usher in a society where there would be equality for all and no one will be discriminated against the inequality between the sexes continues. The alarming increase in dowry deaths and the daily reported molestation of women, clearly indicate society's attitude toward women. The persistent decline in the sex ratio and the evidence of neglect of female infants to the point of letting them die is increasing the gap between profession and practice.

1.7 The Setting of Present Study

The present Haryana, a tiny state of 27,638 square miles, which came into existence on 1\textsuperscript{st} November, 1966, was carved out of Punjab. Present Haryana is the south-east portion of the Punjab. Geographically, it surrounds the national capital on three sides and it hemmed in between Uttar Pradesh on the north and Rajasthan in the south. Now the state has twenty one districts.

Culture in Haryana is both caste and class based. The culture of this region termed as 'Peasant' culture. This peasant culture emerges as simultaneously 'dominant' and 'popular' with layers of subaltern culture under its hegemonic fold. This dominant popular culture is also distinctly different from the high caste Brahmanical culture identified with the great tradition found in certain other parts of India. This culture does not work to the exclusion of other cultural strands, and

encompasses both the ritually higher as well as the submerged lower castes in a
dynamic and flexible relationship we see many of their cultural practices
operating independently, and frequently in direct contradiction of and opposition
to the dominant popular culture.

This region in the colonial period remained one of the most backward and
under developed regions of Punjab. But the introduction of wide reaching agro-
economic changes have successfully catapulted this region from a backward
subsistence level economy to becoming the second richest state in India. The
exposure to the forces of modernization, the process of westernization,
introduction of modern educational system, reform movement, role of caste
associations and the constitutional reform brought about a marginal change in
Haryana's traditional culture.

The population of the state as per 2011 census was 25353081 persons
consisting 13505130 males and 11847951 females. Haryana accounts for 2
percent of the total population of India. It ranks 16th according to the size of its
population among 28 states and 7 Union Territories in census, 2011. Density of
population is 573 persons per sq. km. when the density of India is 324 persons per
sq. km. As per the census, 2011, the sex-ratio of Haryana is 877. It means 877
females per 1000 males in the state. It is much low as compared to 933 females
per 1000 males for India. Haryana has 66.77 per cent literacy rate. It is 3.1% more
as compared to national literacy rate i.e. 64.8% in 2001. Among male it was 85.38
percent and among females it was 28.9 percent in Haryana. In Haryana, 28.9%
inhabitants are living in urban centres and 71.1% are in rural areas. The females
population constitutes a woefully low of about 27.22% of the total work force and
about 21% of the total cultivators. Almost 5.46% of the agricultural labourers are
women and most significant, 13.83% of the marginal workers are female. The
infant mortality rate is 67%.\(^{49}\) These demographic indicators like accelerated
decline in sex ratio, mortality and economic participation are disturbing. Since

\(^{49}\) Dr. B.L. Sharma (Ed.), *Haryana at a Glance*, Agra: Pratiyogita Sahitya, 2011, p. 34.
women have less access to education, employment and health facilities, their social position in Haryana is precarious and it is a cause for concern.

The introduction of democratic polity based on the principle of equality, universal adult franchise, economic development through planning, rapid spread of educational facilities and the politicization of masses have brought some changes in the traditional culture of Haryana. The democratic values of equality, rational and scientific outlook, achievement orientation and other modern values have been injected in the traditional value system. But the changes have been very slow and imperceptible. The traditional values continue to influence social behaviour. However, their hold has been weakened to some extent.

1.8 Review of Literature

The problem of human rights has been tackled by various authors in different ways. Some authors like Upendra Baxi in his book, "The Future of Human Rights" explain that our legal system is ineffective and insufficient taking in to account the courts, the police system, the prison system etc. The troubled relationship between human suffering and human rights is the central concern of this book.50

Arun Ray Mahapatra's, "National Human Rights Commission of India" explain the formation of NHRC. He said that increasing attention should be given to the protection of the rights of vulnerable groups in society including minorities, indigenous people, right of the children and of women, which seems to be the most important challenge facing the NHRC at the moment.51

S.K. Khanna’s, "Women and the Human Rights", explain the any assessment of the status of women has to start from the social frame work. Social structure, cultural norms and value system influence social expectations regarding the behaviour of both men and women. This work also explain the various

declarations and conventions related to women right at international or national level.\textsuperscript{52}

\textbf{Jaya Kothari Pillai's}, "Women and Empowerment" focus that women have to empower themselves. They have to understand the causes of the existing inequality of women in all sectors – economic, social, political, legal and educational and take the initiative to change their status. She also discusses the strategies of empowerment especially the importance of the new roles for education. She also raise the problem why women lag behind the men, with similar conditions.\textsuperscript{53}

\textbf{R.S. Agarwal} in his work, "Human Rights in the modern world" deals with the nature of condition of human rights in developing countries. According to him each country is entitled to develop its own forms and methods for realization of civil, political, economic, social and cultural rights.\textsuperscript{54}

\textbf{Anita Chena's} work, "A Human Rights approach to Development" looks at the challenge to more beyond rhetoric and make the realization of ‘human rights for all at all times’ a reality. This work treats human rights from the perspective of the poor and describes how it can be insured for the poor people. This book describes the process of securing human rights for the poor as ‘empowerment’ making the poor powerful enough through organizing them in to a critical mass to secure human rights and then forming institutions of the poor to defend their human rights.\textsuperscript{55}

\textbf{Gurpreet Mahajan's} book, "Identities and Rights", explain the relationship between religious communities and the state, minority rights, secularism and reservations. She presents the specifics of the Indian scene in a

comparative manner. This book elaborates the principles of liberal democratic theory.  

Rajawat in her book, "Burning Issues of Human Rights", discusses some burning issues of human rights which are common today. This work encouraged people to protect our human rights. It is the duty of all people and government to create the condition headed to exercise our right to be human.  

Fatima Siddiqi's, "Women and Human Rights", covers a wide spectrum of issues related to women and human rights. In contemporary society these issues have attained significance. The modern age and its development paradigms consider gender justice as one of the prominent pillars on which any society can build on further.  

M. P. Dube and Neeta Bora (ed.), "Perspectives on Human Rights" is a recent work which contain various articles out of which some are useful to the present study. These include: 'Human Rights: An overview', 'Human Rights in India', 'National Human Rights in Theory and Practice'. These articles are helpful in tracing the theory and practice of human rights in our country. This work clarified the concept of human rights for promotion of the happiness of the people of India.  

Rose Meyer's "Women Rights – Search for Identity", describes that enhanced self awareness and rising status in society are the two prime movers in the mobilization of women power. Women rights in various fields and movement for their rights has been a step-by-step process that has been hastened by appropriate legislation and widely mobilized public opinion. This work focuses

---

on the participation of women in various fields such as labour force in India, Development programmes, equal work environment, political consciousness etc. 60

K. P. Saksena’s edited book, “Human Rights and the Constitution – Vision and Reality” explains the thoughts of eminent and experienced human rights activists, educationists and jurist, who attempts to analyze the factor responsible for the sordid state of affairs and the challenging task facing the government as well as people, both as individual and organized groups. This work would be of immense value to all concerned policy working, advocacy and better understanding of human rights issues and challenges facing the country. 51

Antonio Cassese work “Human Rights in a Changing World” describe the global view of the field of human rights in a changing world. He examines a number of key issues, such as crime against humanity, genocide, torture, apartheid and hunger in the third world. Drawing on these case studies Cassese sheds light on the broader theme of human rights and develops a general analysis of human rights in the modern world. 62

Anil Dutt Mishra’s (ed.), “Perspective on Human Rights” contains various articles among them ‘Human Rights and the Medieval Indian State System’, ‘United Nation and Human Rights’, ‘Human Rights Organization: An Evaluation’ are helpful in knowing the history of human rights. This work also provides a comprehensive yet non-scholastic profile of the parameters of the form, content, direction and debate in the area of human rights. 63

H. O. Aggarwal in his work “Implementation of Human Rights Covenants” examines international standard for the protection of human rights and then compare them with that of Indian standards. In this regard it throws light upon the human right praxis. It also enlists those rights which are available to the

citizens of India by liberal interpretation of Article 21, which otherwise are not specifically mentioned in the constitution.64

**D.K. Bajwa**'s work *"Right to Life: Its Study Under Indian Political System"* has made an attempt to explain, analyze and evaluate the interaction of Right to Life under the Indian Political System. Her work traces the origin of this right from freedom struggle to incorporation of it in the constitution of India. Microscopic analysis of judgements delivered by Indian courts reveals that right to life has been given new dimension with the changing situation in the Indian political system. The main thrust of this work is to focus the attention to explain the nature and extent of violation of right to life in our country.65

**Freed Kazmi** in his book, *"Human Rights – Myth and Reality"* makes an attempt to understand human rights in theory and practice. He clarified the concept of human rights for promotion of the happiness of the people of India.66

**Shankar Sen**'s, *"Human Rights in a Developing Society"* explains the number of human rights problems in a developing society. They traverse a wide field, covering in their sweep problems like human rights violations by the police, night marish conditions in Indian prisons, shameless exploitation of women and children and other human rights issues like the rights of the victims of crime. In this work, the author has drawn on his rich and varied experience of working as a law enforcement officer and as the Director General of the National Human Rights Commission.67

**Nagendra Singh** in his book, *"Enforcement of Human Rights"* enlists the ways and means for enforcement of human rights during peace and war. It contains actual picture of human rights which need strong hand to implement.

---

them. This book provides insight to the problem of implementation of rights. The entire work is devoted to legal aspect of human rights. 68

C. Naseema's work, "Human Rights Education" explains the meaning, theories of human rights. She gives a detailed description of International Declarations and Conventions. She also gives the historical back ground of human rights in India and their implementation. Main focus of her book is on Human Rights education from elementary level to higher level. 69

Batra in his study "Human Rights – A Critique" is much worried about the violation of human rights. He explain how, on the one hand, human rights are proclaimed to be inviolable and on the other hand, human being seeking such rights are tortured, maimed, disemobowelled, killed and even burnt alive. Prisoners all over the world ring with the cries of their unfortunate victims. This work is useful to identify the area of violations of human rights. 70

G. Saibaba and Dr. K. Sreenivasa Rao's edited book "Structural Adjustment and Implication of Human Rights" covers the ongoing economic reform which is sweeping the nation on all fronts. Its special emphasis is on the core theme of Human Rights in the context of structural adjustment and its implication for human rights. Several articles focussed on the broad contours of the need to provide legal, political, social and economic perspectives to promote the spirit of globalization, democratic values and universal principles of human rights. 71

Kashyap in his work entitled, "Human Rights and Parliament" attempts to clarify the meaning, scope and ranifications of the concept of human rights in India and the role that parliament has played in safeguarding them. The focus throughout is on the actual role of Parliament in the field of human rights.

71 G. Saibaba and Dr. Sreenivasa Rao, Structural Adjustment and Implication of Human Rights, New Delhi, 2003.
concerns in India. The themes of this work assume special importance for the developing societies.\textsuperscript{72}

\textbf{Abdulrahim P. Vijapur and Kumar Suresh} (ed.) book is the result of the selected papers presented in the two seminars conducted by Jamia Hamdard to commemorate the fiftieth anniversary of the UDHR. These papers represent a collective effort to provide different perspectives on a wide range of subject matters by scholars, activists, bureaucrats, jurists and academis. Each paper contains ideas, arguments and analyses on different human rights issues. In sum in, this remarkable compendium attempts to make a valuable contribution to the existing literature on the subject.\textsuperscript{73}

\textbf{Borgohan}’s "Human Rights: Social Justice and Political Challenge" represent a timely effort to focus attention on a vital subject that touches the hearts and minds, even the future of all people of the world. This book provides a comprehensive yet non-scholastic profile of the parameters of the form, content, direction and debate in the area of human rights.\textsuperscript{74}

\subsection*{1.9 Relevance and Scope of the Study}

The review of literature and concept of Human Rights as an immediate background, our focus here is directed to the study of Women Rights in the state of Haryana. It is clear from the forgoing discussion on the review of literature that very little work has been done on Women Rights in Haryana, women have been mostly ignored. Despite the efforts of the central and state governments, women organization, National Human Rights Commission and National Commission for Women and other agencies to study the problems of women. No systematic efforts have so far been made to investigate human rights conditions of women in state of Haryana. With the exception of a few occasional brochures, pamphlets

\begin{flushleft}
\end{flushleft}
and handouts, the political parties have also not given attention to the problem, when one looks literature on Human Rights perspective in India, he would highly disappointed. There is absolutely no published work available on this. Even unpublished work is not available on the subject in the state of Haryana.

The dearth of literature on Women Rights in Haryana and the condition of women in Haryana, where majority of female population is living below the poverty line, and are illiterate and a large number of women are living a life of degradation, destitution, misery and suffering has prompted me to take up this study on women rights in the state of Haryana. Hence the importance of the present study is obvious.

1.10 Main Focus of the Study

In brief our focus here in the present study is to examine and analyze:

(i) Women Human Rights in Haryana.

(ii) Policies and Programmes for women in Haryana

1.11 Hypotheses

The major hypotheses of the research work are as follows:

• Patriarchal power structure seems to aggravate violation of women rights.

• Lack of education and poverty lead to violation of women rights.

• Women rights violations are by products of political discrimination and policies of sustained deprivation.

• State of Human Rights in a society have linkage with the mindset of authorities in charge of the maintenance of law and order, and administration.

• Manipulation and deprivation of Human Rights are by choice of affluence and by force of poverty.
• Political parties, NGO’s interest groups, media and judiciary are capable enough to raise public opinion in protecting and promoting women rights.

1.12 Objectives

• To evaluate the various provisions of human rights for women in India.

• To evaluate the role of political parties, NGO’s, interest groups, media and judiciary in promoting women rights.

• To examine how women rights violations takes place, besides constitutional provisions?

• To evaluate the causes for violation.

• To find out the areas of violation.

• To evaluate the practice of socio-economic, civil and political rights of women.

• To evaluate the impact of feminist movement on women rights condition in India.

• To find out what necessary action or policies can be implemented for safeguarding the rights of the women?

1.13 Methodology

This research work shall make an attempt to look into the political, socio-economic, environmental women rights discourage and practice. Here it is tentatively assumed that the pre-dominant power and paratriarchal structure in a society shapes the fate of women rights.

For the purpose of the collection of data both primary and secondary sources of data were adopted. For primary sources of data responses of the respondents women were collected through interview. For secondary sources of data books, journals and pamphlets were taken in to accounts. Interview of respondents was conducted through structured as well as non-structured
questionnaire. Questionnaire was having both types of question that is open ended and close ended. The questionnaire employed for the present study consisted of several individual block. The information from respondents was taken on various aspects as: socio-economic states of respondents; socio-economic rights; and civil and political rights of the respondents.

For proper understanding of the respondents the questionnaire was translated into Hindi and was pretested on few women and then final draft of the questionnaire was prepared. The respondents began in slightly defensive and reticent vein especially poor women. The empirical method, which looks into all possible interactions of power relations, their autonomy and dependence shall be followed here. As issues of rights and non-rights, privileges and deprivation, domination and subordination, which are very important for any meaningful understanding of human rights, historical and analytical methods also be used. To make the study more comprehensive it will include reports on parliamentary proceedings, the reports of various Human Rights agencies, the publication of Indian governments and state of Haryana. Interviews with officials and other concerned people such as human rights activists also be incorporated. Broadly speaking the study is exploratory in nature and the conclusions are tentative. The information thus collected, coded and tabulated has been given in tabular format in the proceeding chapters.

1.14 Plan of Chapterization

The scheme of chapterization is given below. The data and information collected for the study have been classified in five chapters including the concluding chapter accompanied with bibliography.

Chapter-1

Introduction – The first chapter is about the general introduction dealing with the concept of Human Rights. It includes the meaning of Human Rights, its origin and its significance along with the various types of human rights as well as
the views of various thinkers. This chapter also includes the women rights, review of literature, hypothesis, objective and methodology of the study.

Chapter-2

**Human Rights in India** – The second chapter takes into account the various provisions of human rights in the Indian Constitution. It also describes the condition of Human Rights in Ancient, Islamic and British Era. It describes the impact of Universal Declaration of Human Rights in the Indian Constitution. It also includes the application of other International Law of Human Rights.

Chapter-3

**Human Rights of Women in India** – The third chapter deals with the various women rights provisions in India. It also deals with the implementation of various provisions. It also described various facilities and programmes for development and empowerment of women in India. It also includes the role played by the NHRC, NCW, NGO’s and Media in the field of Women Human Rights.

Chapter-4

**Women Human Rights in Haryana** – This chapter focuses on the women rights in the state of Haryana. It also describes the various policies and programmes for women in Haryana. Focus of this chapter is on women rights, part played by the State Government, State Commission and various other organizations is the focus of study.

Chapter-5

**Conclusion** – The concluding chapter evaluates the socio-political and economic roots of women rights in Haryana and also describes the position of women human rights in Haryana based on secondary data along with some important suggestions to improve the women rights situation in the Haryana and the role played by the various agencies.

-------- 0 --------