EVOLUTION OF
HUMAN RIGHTS EDUCATION
Chapter II

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The concept of human rights is as old as the doctrine of natural rights founded on natural law, based on mankind's demand for a life in which the dignity of the human being will receive respect and protection. It comprises of those minimal right, which every individual must have by virtue of his being a member of the human family irrespective of any other consideration. The most precious legacy of classical and contemporary human thought to culture and civilization has been the human dignity, which has culminated into the present day.

A survey to the evolution of the concept of human rights tells that it evolved in different backgrounds in the east and in the west. The western concept of human rights is right oriented whereas the eastern concept of human rights is duty oriented. Here mention may be made about a common source of human rights throughout the world, that is, religions. The church fathers dominated the socio-political environment in the west during the medieval period and influenced the thinking of the people and the rulers in all walks of life. Buddhism, Hinduism and Islam spread in the east and helped development of a duty-oriented concept of human rights, though the latter is considered to be of recent origin.

The life in the ancient world was bitter without any hope of redemption. The majority of people in each city-state consisted of slaves and metrics that had no rights of any kind. In each city-state only a few people were free persons. Even amongst them wives, children, artisans and moneylenders had no rights. The few persons that used to take part in the affairs of the State and had the leisure were not all equal among them. They were told that they were not equals and their virtue consisted in performing their duties only.

Plato, the Greek philosopher projected the inequalities of men in his 'Republic'. Some people have the power of command and they have the greatest
honour. Besides, there exist men to be auxiliaries and husbandmen and craftsmen.

Aristotle declared slavery as a must for the good life of the few with leisure and property. To him statesman, king, householder and master are the same and that they differ not in kind but only in the number of their subjects. For he who can foresee with his mind by nature intended to be lord and master and he who can work with body is a subject, and by nature a slave.

People in Rome were divided into various classes the slaves, the quests (the temporary residents), the clients who placed themselves under the protection of _pater families plebeians_ (the foreign immigrants) and the patricians. Among all these people only the patricians were the citizens and enjoyed certain rights all others had no rights- political, civil or social. It took about 500 years for the two classes to amalgamate and to be treated as citizens.

The concept of human rights is bound up with the social environment as well as with the natural law. Natural law is value loaded and it has been a symbol of higher and ideal goal working as a trendsetter both in times of tranquility or turbulence. Natural law has always been regarded as a frame of reference to adjudge the validity of existing state of affairs whether for maintaining _status quo_ or for bringing about a radical change. Natural law in common sense means the law that is largely unwritten and consist of principle of thought as revealed by the nature of man or reason or derived from God.¹

Natural law is mixed up with a number of high ideals- such as morality, justice, ethic, right, reason, good conduct, equality, liberty, freedom, social justice, democracy etc. Natural law as such is not a body of actual erected or interpreted law enforced by courts. It is rather as earnest Barker remarks, ‘way of looking at things- a spirit of ‘human interpretation’ in the mind of the judge and jurist.

The Greek philosopher, the sophists, Socrates, Plato and Aristotle professed the concept of natural law in a theoretical manner. To Greek, Natural law was both a way of living and thinking. Heraditus was the first Greek

philosopher who founded natural law philosophy in the rhythm of events. Socrates emphasized practical morality and said, "virtue is knowledge, whether is not knowledge is sin".

According to Plato (427-347 B.C.) the doctrine that National Law meant natural justice that is, justice is harmony of men’s inner life and harmony is the quality of justice and it is achieved by reason and wisdom over desires. Plato is of the view that it is the intelligent men- the philosopher who should be the king. Aristotle (384-422BC) expounded the theory of Natural Law and positive Law in clear terms. He said, "the purpose of State, community and law is to enable man to realize good life that is living accordingly to virtue". 

The Greek philosophers expounded the doctrine of higher law of nature based on reason in philosophical sense. Their philosophy was that men should live according to reason. The origin of the concept human rights is found in the Greek and Roman natural law of Stoicism, which held that a universal force pervades all creation and that human conduct should therefore be judged accordingly to the law of nature and in the Law of nations. Natural law embodies those elementary principles of justice, which were right reason- unalterable and eternal.

The entire Greek political thought from Thales upto Aristotle is dominated by the effort of search for ultimate reality. Referring to Plato’s discovery of reality one may point out that he had a great philosophical insight and possessed the vision of a poet. He worked against this background of philosophical speculation and developed his theory of ideas. To Plato permanent character of anything is idea. It is to be noted that by idea Plato did not mean a thought existing in the mind, because such a thought had a temporary existence and was as transitory as any event in the outside world. An idea in Plato’s sense is not a part of the world of time and space. It is eternal; it is the final and independent reality. It is the source of all goodness. The knowledge of the Platonic conception of the idea

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2 Dias, R.W.M., Jurisprudence, Aditya Book Pvt. Ltd., New Delhi, 1994, p 74
4 Dobsen, H.K., The Annals of Greek Political History, p 52
5 Ibid, p 35
of good is necessary for the understanding not only of Plato but of Greek philosophy in general. Plato proceeds to say that it is at once, first, the end of life, that is, the supreme desire and aspiration; second, it is the condition of knowledge or that which makes the world intelligible and human mind intelligent. Plato explains that God is the truth of all things and the light in which they set forth and become evident to intelligence, human and desire.

The study of Plato's philosophy reveals that the idea of God is not merely an abstract conception, nor is it identical with any particular existing objects; it reveals itself in everything that truly exists. It is the source of all truth, of all knowledge of beauty and of moral goodness.

Aristotle, while depicting the ideal State, said, "In the natural order of things, those may be expected to lead the best life who are governed in the best manner. But the best is often unattainable and therefore the true legislator and statesman ought to be acquainted, not only with that which is best in abstract, but also with that which is best relatively to circumstances. We should therefore consider, not only what form of government is best, but also what is possible and what is easily attainable to all".

The great Aristotelian idea having a universal appeal and influence and reflecting a good deal of sanity and modernity is his conception of the sovereignty of law. This principle as a "Rule of Law" has been accepted today by almost all democratic States and has been incorporated by them in their constitutional practices. Professor Ebenstein wrote, "the Aristotelian concept of the rule of law became one of the dominant political ideas of the middle ages, during which political relations were largely based on customs. In modern times the concept of the rule of law has become one of the pillars of the constitutional edifice of the United States and in many other countries. In Germany the doctrine of the Rechtsstaat, that is, the State based on the rules of law, was one of the most civilizing and liberalizing political influences in the 19th century."
Aristotle's ideas on the establishment of social justice based on the doctrine of proportionate equality have become the slogans of all the champions of socialism and of absolute equality in the economic sphere. The advocates of the welfare state have accepted the Aristotelian thesis as the last judgement on the establishment of economic justice in society.

Aristotle's emphasis on the utility of public opinion is essentially a modern character. He held that the collective virtue and political ability of the mass people was certainly greater than any part of the State.

Further there is a resemblance between Aristotle's and modern theories of sovereignty. His doctrine, that sovereignty in a state should reside in a determinate human superior whose will should be treated as supreme, affected very considerably the 19th century concept of sovereignty as enunciated by John Austin in his famous book "Lecturers on Jurisprudence".

The importance that Aristotle attaches to the individual will always continue to make universal appeal. It is because of this importance that gives to the individual that Aristotle may be described as the father of modern individualism. His ideas on family and property as natural and necessary institutions for the development of individuality, received wide support. His sober and some individualism are reflected by his views on the sphere of state activity. His statement that 'State comes into existence for the sake of life but it continues to exist for the sake of good life,' was a very significant declaration supporting the cause of the individual and explaining the duties of the State. Although he admits that a man has personal value only as a member of the State, but the State is not treated as an end in itself or of the members. He realized that the fullest development of man's personality is not possible through a complete control on the part of the State. The business of the State is to allow its citizens to lead a complete life and for that the State should give considerable amount of freedom to its individuals. Though explicitly conservative, Aristotle's thinking was suffused with qualities that characterize the liberal temper, the open mind. In the 20th century one has had the opportunity to learn again that there is perhaps no force
so destructive, so deadly, to civilized life as fanaticism; it starts out with unbending certainly.\(^8\)

The Stoics represented another school of thought who came into existence after the death of Aristotle. The Stoic philosophy was also highly individualistic and most influential. Stoicism was individualism, cosmopolitanism and social equalitarianism. To the Stoics the only good was virtue and the only evil was vice. Virtue and vice were held to consist, respectively and primarily in right and wrong disposition of the will. The will was regarded by them as completely under the control of the individual. Hence they held that the attainment of the true good was wholly within the power of each individual. A life in accordance with nature was interpreted to mean two things—firstly, he would justifiably seek the fulfillment of his simple, natural instincts; secondly, because the mankind was naturally one family, he would seek to serve his fellowmen.

To the question why a man should act in accordance with nature, it was answered by the Stoics that nature is reason. A life accordingly to nature meant co-operation with all forces of good, a sense of dependence upon a power above man that makes righteousness and the composure of the mind that comes from faith in the goodness and reasonableness of the world. The Stoics had immense faith in the rationality of men. They held that man was rational and that God was rational. Men are the source of god and therefore they are brothers to one another. Since every man is endowed with reason, so, every man is equal. Hence there is a world State. Both Gods and men are citizens of it and it has a constitution, which is right reason, teaching men what must be done and what avoided. Right reason is the law of nature, the principle, binding on all men whether ruler or subjects, the law of God. According to the stoics, there are two laws for every man. The law of his city, which is the law of custom, and the law of the world city, that is the law of reason. Of the two the second must have the greater authority and must provide a norm to which the status and customs of cities should conform. Customs are many but reason is one and behind variety of customs, there ought to be some unity of purpose. It diminished the importance of social

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\(^8\)Ebenstein, W. op. cit. p 34
distinctions between individuals and tended to promote harmony between states. It thus, according to Professor Dunning, 'brought into prominence the fateful doctrines of natural law and cosmopolitanism. Cosmopolitanism, in fact, expanded into humanitarianism. The dignity which at first was ascribed exclusively to men of specially exalted intelligence came to be ascribed, in theory at least, to all who possessed human nature. The stoics thought the man's inward life was more important than man's outward status.

The Stoic philosophy enjoys a position of great significance in the history of political thought. It established in clear terms the notion of equality of men. It set forth the concept of the law of nature, which later on became the basis of Roman jurisprudence. The Stoics coined the phrase "Citizen of the world" for the first time. The ideas of universal brotherhood of men and world Government are definitely the legacy of the Stoics. It laid emphasis on the acquisition of ethical values, which invited living according to the dictates of right reason.

Coming to the Roman legal system one has to admit that the Roman law was Rome's greatest gift to humanity after the political legacy of the Greeks. One of the important features of the Roman legal system was its liberalism. With the expansion of Rome several new ideas were introduced which widened and liberalized the Roman law, making it specially well fitted for the Government of a world empire.

The contribution made by Cicero toward the development of human rights is of great significance. He started giving explanation of the meaning and origin of the State with a statement, "Res-public is Res-populi", meaning thereby that the affairs of the state are the affairs of the people. But the State is not merely an assemblage of men brought together in any fashion whatever. It is however, "an assemblage of many associated by consent to law and by community of interest". It exists for the enforcement of law for the common good. Based on such a law, the State is to be regarded an ethical community. The State may be tyrannous and may rule with brute force, but the moral law will

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10 Dunning, W.A., Political Theories, Ancient and Medieval, pp 104-05
11 Mc Llwain, CH., Growth of Political Thought in the West, 10th ed., 1957, p 98
continue to make morality possible and if it does not do so, the State loses its reason of its existence, as well as its real character. Judged in the light of this conception the State is that association of human beings who are united together by a common agreement about law and right and by the desire to participate in mutual advantages. Explaining the reason of its coming into existence, Cicero said that the prime cause of their coming together is not weakness but rather a sort of natural affinity for each other because they are endowed with the instinct of gregariousness which is inborn.

Cicero has devoted a large portion of the book titled "De Republic" to the discussion of justice. Justice according to him consists in acting according to the law of nature, which is the dictate of right reason. Since every man is endowed with reason, therefore, every man is equal. Justice meant equality of opportunity to all and to give everyone his right. Protection of right is the basis of justice. Natural distrust and fear become the very cause of their insecurity.

Thus on the basis of the law of nature, which is based on reason, Cicero preached the equality of men. Here he deviates from the traditional line of Plato and Aristotle. Referring to the equality of men, he says that they are not equal in learning, nor it is proper for the state to equalize their property, but in the possession of reason, in their underlying psychological make up and in their general attitude towards what they believe to be honourable or base. The things that actually prevent men from being equal are errors, bad habits and false opinions.

There is another great aspect of Cicero's political philosophy in which he goes much farther than Aristotle. He stressed on popular consent as the very basis of a true Government and on liberty. Accordingly to Cicero, "Liberty has no dwelling place in any State except that in which the people's power is the greatest and surely nothing can be sweeter than liberty, but if it is not the same for all, it does not deserve the name of liberty." Cicero's conception of liberty contains two important points. Firstly, that liberty or rights should be given to all citizens irrespective of their class distinction. Secondly, the consent of the people should be regarded as the only source of legitimate Government. Cicero set the
concept of the people as political and legal force in matters of governance. It is this concept, which in modern times has acquired a great significance and meaning in the worldwide struggle for democracy and popular self-government.

The great importance of Cicero lies in the fact that he breaks the tradition of Plato and Aristotle. He advocated the equality of men and preached for the human dignity and respect due to each man. He propounded a new theory of justice based upon the equal rights of men. He was the first to think in terms of humanity.\textsuperscript{12}

After the end of the Roman civilization chaos and conflicts had swept Europe. The authority of church became supreme. The church fathers were interested in maintenance of law and order in the society. In order to maintain peace and stability natural law was given religious colour. In fact Natural Law was tempered with Christian theology and political and legal ideas. Christian fathers especially Ambrose, Austin and Gregory postulated the supremacy of divine law over all other laws by making the divine law the ultimate criteria of divine reason. Efforts were made to identify law of nature with law of God. St. Isodore observed:

"All laws are either divine or human. Divine laws are based on nature, human laws on customs. The reason why these are at variance is that different nations adopt different laws."

In the twelfth century Gratiaon was able to show that because of its divine character the natural law is binding and overrules all other laws. He said, "Natural laws absolutely prevails in dignity over customs and conventions, whatever has been recognized by usage, or laid down writing, if it contradict natural law must be considered null and void.\textsuperscript{13}

St. Thomas Aquinas was the first important theologian who in his famous work "Summer Theological" considered law as a means to an end. He made a clear distinction between "Lex aeterna" and "Lex naturalist" of which former is the reason of divine wisdom "governing the whole universe" while the latter is the law

\textsuperscript{12} Singh S., A History of Political Thought, Rastogi and Company, Meerut, 1966, pp 280-320
\textsuperscript{13} Carpenter, William Seal.,Foundations of Modern Jurisprudence, New York, 1958, p 58
of human nature and governing the actions of men only " thus that part of the eternal law which man's reason reveals is to be called natural law. As regards human law (Lex human) was concerned, it embroiled the primary precepts of natural law.

The precepts of human laws are to live honorably, to injure no one, to give every man his due.

The natural law on the other hand is only imprint of the eternal law, which cannot be absolutely perfect. The positive law-the human law is really an implementation of natural law and has to vary with changing circumstance and conditions of social life.

The eternal law, the natural law and the human law form a continuous series. The whole series may be compared with a tree, with the eternal law for its root; the natural law for is trunk, and different system of human law for its branches.  

The natural law of the classical modern era was in essence different in form and spirit from that of medieval age, which was dominated by church, priest and holy Christian saints. After renaissance and reformation in the 14th and 15th centuries natural law ceased to be associated with church or divine God.

The natural law of the modern classical period was marked by its two distinctive features, first, it was more secularised, political and non-religious in form and content. The new natural law philosophy moved away from its theological or divine origin and founded it once again on human reason exclusively. Second, the medieval thinkers had made individual as mainly an object having many duties and obligations towards Pope and the Emperor that is, the feudal lords. The emerging natural law in the classical era become a theory of natural right of man and States, which dominated the British, the French and American revolutions in the 17th and the 18th centuries.

Hugo Grotius (1583-1645), the Dutch scholar philosopher statesman, jurist and diplomat was the child of renaissance and reformation. He propounded a theory of functional natural law.

The aim of Grotius was too constant a system of natural law independent of theological presuppositions, which culminated in making natural law 'Secular' and non-religious. He had a strong belief that the natural law was rooted in the nature of man and would exist even if there were no God.

Thomas Hobbes (1588-1679) completely stripped natural law of its religious and metaphysical character. Hobbes was concerned rather with Man's right and tried to derive from the characteristics of human nature certain natural or fundamental rights.

John Locke (1632-1704) rejected Hobbes concept of law as absolute despotic sovereignty of the ruler. To John Locke State was designed to guarantee and protect natural rights of the individuals. His theory of social contract is another version of the doctrine of consent, which implies that authority rests on the consent of the subjects. Such an idea of popular consent has played an important part in the development of parliamentary democracy in England and elsewhere in the Commonwealth countries. He, in fact, made life, liberty and property his three cardinal rights, it influenced the American Declaration of independence.

On 4 July 1776, the second Continental Congress attended by delegates from English colonies in North America adopted the Declaration of independence. The war of independence, however, was an official declaration by the American colonies and formation of the United States of America. The significance goes beyond an expression of the colonies reasons for proclaiming their independence from the British. The worldwide significance lies in the assertion that "all men are created equal, that they are endowed by their creator with unalienable rights, that among these, are life, liberty and the pursuit of happiness". To secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed.

In 1789 occurred the French revolution; the storming of the fortress of Bastille, a State prison by the people of Paris on 14 July that year symbolized the end of autocracy and of the old regiment of France. The National Assembly of

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15 Singh, Dr Deepa, Human Rights and Police Predicament, The Bright Law House, Delhi 110006, 2002
France, which had started meeting in June 1789, adopted the declaration of the Rights of Man and Citizen on 26 August 1789 as a preamble to the new constitution that it was framing for France. This declaration was truly international in its appeal and inspired revolutionary and democratic movements in almost every country of Europe and in Central and South America and, later in Asia and Africa.  

In 19th century many wars were fought among the nations and destructive weapons capable of destroying the whole human civilization were invented. But at the same time attempts were made to forge unity among the nations of Europe as well as of the world by renouncing war. The organization of the League of Nations comes therefore as the logical result of this period. The League of Nations owed its origin to the efforts of the European nations to settle international disputes by peaceful means. During World War I the people throughout the world and particularly of Europe faced untold distress. Terrible massacre of human souls, large scale destruction of private and national properties and the honour of the deadly scientific weapons created terror in the hearts of the people all over the world. Everywhere they become eager for peace and inter-state co-operation. Political thinkers of England, Germany, the USA, France and the like had been preaching for the establishment of an organization for holding discussions on all international problems. In 1916 the US President Wilson suggested an organization for ensuring "peace and justice throughout the world. In August 1917, Pope Benedict XV had pleaded for the settlement of all international disputes by arbitration instead of war. Movements for peace also gained ground in Germany and the world organization grew in volume in England, America and France. In June 1915 an organization called the "League enforce peace" was formed in America. In England Philmore and Smuts greatly supported the idea of a world organization. Ultimately in January 1920 League of Nations came into force on the basis of the last principle of Woodrow Wilson's 14 points. Its chief aim was to promote international co-operation and to achieve international peace and security.

By 1938 the League of Nations almost passed into oblivion. Due to the aggressive activities of Japan, Italy and other big powers the League of Nations almost became a default body. With a view maintaining balance of power, the big powers again reverted to the pre-war policy alliance and regional pacts. The World War II broke out in 1939. For the second time the intensity of the war, the use of new types of distinctive weapons, the large scale of casualties and destruction of property had made people all over the world anxious for peace and security and they felt the necessity of establishing a well organized and more powerful world organization.\(^17\)

The beginning of human rights law came about as a result of the World War I. The new league of Nations-forerunner of the United Nations required a commitment by administering powers in the trust territories to promote the welfare of local population. It was simply the first outward and visible manifestation of the authority of rule of law in the world.\(^18\) The terror waged by the Nazi regimes led to a rebirth and internationalization of human rights. The first document, which dealt with the problem of human rights in the recent history, was President Roosevelt’s declaration of 26 January 1941 on the “four freedoms” —freedom of opinion and expression, freedom of worship, the right to be free of material want and the guarantee of life without fear. This was followed by the Atlantic Charter which came up on 14 August 1941 with signatures of Roosevelt and Charter in addition to the inclusion of ‘four freedoms’, consisted of new freedom called, the need for nazism and expressed their faith in the principles of equality of nations, universal peace, collective co-operation and prohibition of territories through conquest.

The United Nations Declaration on 1 January 1942, Moscow Declaration of 30 October 1943 and Tehran Conference of 1 December 1943 paved the way for the Dumbarten Oaks Conference, 1944 which gave institutionalized shape to the concept of human rights for the first time. The conference met at Dumbation Oaks in October 1944 undertook the task of drafting the constitution of

\(^{17}\) Roy, A.C., International Relations Since 1919, World Press, Kolkata, pp 591-600

international organization in order to succeed the League of Nations. Then a final step was taken at the Conference of San Francisco in April 1945 when the four major powers submitted their amendments to the draft charter. These amendments embody three important human rights features, namely, the charter should express all human rights more clearly and emphatically, economic, social and cultural problems and rights should be included in the charter; and it was necessary to set up the Commission on human rights as one of the United Nations major Commission and provide for its creation in the text of the charter. In fact a proposal to embody an international bill of rights in the Charter itself was put forward but not proceeded with for the reason that it required more detailed consideration. However, recommendations were made to the effect that the work of the Commission on Human Rights, the establishment of which is provided for in Article 68 of the Charter, should be directed, in the first place towards the formulation of an International Bill of Rights. Accordingly, when Economic and Social Council laid down the terms of reference of the Commission on Human Rights in February 1946, an International Bill of Rights was the first item on its work programme.

One after another, just after the establishment of the United Nations, volumes of documents most of which being concerned with the protection of human rights, appeared in the shape of international law. There are significant documents in this respect, the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights.

A tremendous breakthrough for the draftsman of the United Nations Charter was the emphasis on certain human rights provisions as the foundation for a war-free international community. In the preamble to the UN Charter the people of the United Nations reaffirm their faith in fundamental rights, in the dignity and worth of the human reason, in the equal rights of men and women and determination to promote social progress and better standards of life. Here mention may be made of the following Articles-

Article I of the UN Charter emphasized on its non discriminatory character
“To achieve international co-operation in solving international problems of an economic, social or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race sex, language or religion, and to be a center for harmonizing actions of nations in the attainment of these common ends”.

Article 55 one of the most important provisions of the Charter lays down that:

“With a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on the respect for the principle of equal rights and self determination of people, the United Nations shall promote;

A. Higher standards of living, full employment and conditions of economic and social progress and developments.

B. Solutions of international economic social, health and related problems, and international cultural and educational co-operation, and

C. universal respect for and observance of human rights and fundamental freedoms for all without distinction to race, sex, language or religion.”

The UN Charter undoubtedly has the supreme status of a multilateral treaty because it is the founding state of an inter-governmental organization. There is also no doubt that from an international law point of view it creates binding obligations on the State actions. Article 56 of the UN Charter embodies one of these obligations expressly in the form of a pledge to take joint and separate action for the achievement of the purpose set out in article 55.

The UN Charter neither defined nor provided a list of the human rights and fundamental freedoms. However, this omission is covered by the preamble of the Universal Declaration of Human Rights.\(^{19}\) In fact though a Declaration, it is considered to be a part of customary international law and has been regarded as \textit{jus cogens}.

The United Nations, after the World War II started emphasizing on the human rights issues especially in the background of war crimes, and crimes

\(^{19}\) Resolution no 217 A (iii) of the UN General Assembly, 10, Dec. 1948. pp 249-250
against humanity. The legal concept of human rights was for the first time accepted and given practical application during the Nuremberg trials. Opinion has been divided on the question whether the human rights provisions of the UN Charter could even constitute binding legal obligations. The school of thought represented by eminent Jurist, Manley O. Hudson has held the view that the Charter is limited to setting out a programme of action for the organization of the United Nations to pursue, in which the members pledged to co-operate. Another jurist Hans Kelsen held the similar view in 1966 when he said that the Charter does not impose upon members a strict obligation to grant to their subjects the rights and freedoms mentioned in the preamble or in the text of the Charter.

The broadest legally binding human rights agreements negotiated under its war auspice are the International Covenant on Civil and Political Rights, its first Optional Protocol and the International Covenant of Economic, Social and Cultural Rights. Both were adopted in 1966 and entered into force in 1976.

Another noteworthy feature in the growth of human rights is the emergence of regional organization. In Europe a unique regional organization with the European Court of Human Rights along with a Parliament is found at Strasbourg. The European Convention for the Protection of Human Rights and Fundamental Freedoms came into force on 3 September 1953. Similarly Inter-American Commission on Human Rights is operational for the cause of human rights in the continent of America. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987) makes a fresh preventive approach to the handing of human rights violations.

Apart from Europe and America legal concept of human rights developed in Africa very fast. The African Charter on Human and People's Right is itself a combination of a number of attempts by the African leaders, all members of the Organization of African Unity to create a regional charter to safeguard human and people's right in Africa. The Law of Lagos (1961) the Dakar conference

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20 The International Tribunal, Nuremberg (1946) AJIL (1947) p 172
(1966), the Cairo conference (1961) the Dar-es-Salam conference (1973) and Monrovia conference (1973) bear witness to the hunger for a human rights charter.

The Australian Bill of Right, 1986 is designed to secure the basic civil and political rights and freedoms of all Australians. Canada has a Bill of Rights since 1960 and has later been followed by the constitutionally entrenched Canadian Charter of Rights and Freedom 1982.

The second Optional Protocol to the Covenant on Civil and Political Rights was adopted by the general assembly in 1989.

Earlier, in December 1997 Lady Hillary Clinton in her addressed to UN observed of human rights that "they have been with us forever, from civilization first light". The statement Mrs. Clinton also asserted that the concept of human rights originated with the beginning of human civilization. Interestingly she refers to the Greece philosophy in his context when she mentions about sop bodes of 2,500 years ago who declared that there were ethical laws higher then the laws of Thaban Kings.

Human Rights in India

The Global framework of human rights was laid down for the first time by the United Nations General assembly on 10th December 1948 in the form of Universal Declaration of Human Rights. Following these Declaration independent India laid down a sound foundation for the protection and promotion of human rights in the country. The preamble of the Constitution India has provided for certain basic principles towards this end.

Indian National Congress and Human Rights

Indian National Congress which was formed in December 1885 under the leadership of A.O. Hume contributed significantly towards the development of human rights in India. The desire for civil rights was implicit in the mention of Indian National Congress that the Indians anted similar rights and privilege which the British rule enjoyed in India. Speaking from the congress platform Surendra
Nath Banerjee, a leader of Bengal claimed that Indians, as born British subject, were entitled to the same rights and privileges as were granted to the British by their own Constitution. He asserted that they were determined to have such though constitutional means. Perhaps the earliest demand for recognition of fundamental rights commenced with the Constitution of India Bill 1895. This was issued with inspiration of Lokmaneya Bal Gangadhar Tilak. It was described as home Rule Bill by-Annie Besant. This Bill contained the rights and directives. Article 15 of the Bill contain the rights of free education and compulsory primary education besides providing from the rights of free speak and expression.

A series of resolution passed by the congress between 1917-1919 that reported the demand for the civil rights and equal status with those of englishman. A farther resolution stated that Parliament should pass a statue granting the civil rights of his Majesty's Indian subjects. This statue would provide for equality before law, a free press, free speech etc.

The demand was fulfilled partially in the constitutional reform of the 1919. It is evident that in the wake of first quarter of the 20th century there was enough political awakening in India. In fact by the mid twenties the congress and Indians leaders generally achieved a new force and consciousness of their Indianess and the need of the people. Meanwhile Mahatma Gandhi appeared in the political seen of India.

Again by the mid twenties a large section of nationalist opinion considered it necessary that the Indians themselves draft the constitution. The next major development was the drafting by Annie Besant's Commonwealth Indian Bill 1925 that was adopted at the national convention and presented to the House of Common by Mr. Lansbury and it sought to achieve for India self governing dominion status except for foreign and defence affairs. This Bill for the single time contains an Article relating to the grant of fundamental rights.

Article 4 of the Bill was entitled as "doctrine of rights". It contain the following provision-

"Liberty of person and security of his dwelling and property". The freedom of conscience and free profession and practice of religion. Free expression of
opinion and the rights of assembly peacefully and without arms and of forming association or union, justice and the like, equality before law, irrespective of consideration of nationality, and equality of sexes”.

The Indian National congress approved Article 8 of the Bill, which stated, “All persons in Commonwealth of India have the right to free elementary education”. In November 1927 just after 2 years after the presentation of the Bill, Indian Statutory Commission was appointed under the Sir John Simon to examine whether Indians were fit for being entrusted with a responsible government.

On 17 May 1927 at the Bombay Session of the congress Motilal Nehru moved a resolution for India in consultation with the elected members of the Central and Provincial Legislatures and leaders of the political parties, based on a declaration of rights. A swaraj constitution to fight for swaraj that is self-government was evolved. In the preamble of the constitution there was a declaration that swaraj was inherent and inalienable rights of the people of India. The constitution was welcome all over the country and endorsed by the Nehru Committee in 1928.

In accordance with the direction contained in the congress resolution of 1927 the working of the congress conceived an all-party conference to draft a swaraj constitution for India. It represented the views of Muslims, Hindus, Brahmins and Non Brahmins Labour and liberals. The conference appointed a small committee with Motilal Nehru as its chairman and seven other members. The main objective of committee was to determine the principles of the constitution for India. The report of the committee known as Nehru committee contained an explanation of the draft constitution, that the first constitution of India was to secure the Fundamental Rights that had been denied to them and which are not to be withdrawn in any circumstances.

The report contained the right of personal liberty, freedom of conscience and the free profession and practice of religion subject of publish order and morality, the right to free expression and opinion as well as right to assemble peacefully without arms.
The fundamental Rights of Nehru report influenced to a great extent. The Nehru report reappeared without change in the constitution and were included in the directive principles.

By the end of 1928 Indian central committee appointed by Indian Legislature supported the inclusion of Fundamental Rights in the Government of India Act 1935. The report was presented to the British. Unfortunately the Commission did not support the demand for examination of fundamental rights in the Constitution of India.

Nothing came out of the Nehru report at the historic session of Lahore of 1929 of which the Jawaharlal Nehru was made the president. It gave voice to the new militant spirit and passed the resolution declaring the Puma swaraj as the objective of the congress. The congress resolution of 1929 emphasized for socio economic reconstruction. The congress suggested revolutionary changes of the economic and social structure for removal of the gross equalities. It was realized that the British government not only deprived the people of India of their freedom but also based itself on the exploitation of masses and ruined them economically, culturally and spiritually.

Subsequently in all three round table conferences efforts for the inclusion of a chapter on fundamental rights in the constitutional document for India were made.

The resolution was modified on 6th August 1931 at Bombay in the All India Congress Committee meeting. The modified version of the fundamental rights and duties and an economic programme was finally adopted at the 47th session of the Indian National Congress held at Kolkata on 1st April 1933. G. Austin characterized the resolution as both a declaration of socialist manifestation. Nehru liked the resolution because it represented the new outlook. Besides discussion and memorandum submitted on fundamental rights at the London round table conference and the meetings of the joint committee in constitutional reforms in India the Indian National Congress passed a historic resolution on the declaration of human rights at its forty -fifth Session held at Karachi on 29th March 1931. It was explained in the conference that in order to put an end to the
exploitation of the masses, political freedom must include, real economic freedom of the starving millions. The congress therefore declared that any constitution to be agreed to all on its behalf should provide, or enable the swaraj. It took a short step in a socialist direction by advocating Nationalization of tea industries. Indian politics however witnessed a radical change during 1940. The Indian National Movement gathered momentum in the year 1941-42. During this period the British Government kept negotiating with the Indian leaders on transfer of political power to them.

The subject of fundamental rights and its incorporation in the constitution of India was discussed in detail by the Sapru committee in 1945 under the chairmanship of Taj Bahadur Supru. Various associations, individuals expressed their views on it. They also suggested for enforcement of those fundamental rights, which are not justifiable. Here is discernable the beginning of the separation of rights. One proposal came from all India depressed class league, which suggested a lists of fundamental rights including social and economic rights. Another suggestion came from a member who made a distinction between civil and economic rights. He pleaded for incorporation of the two sets of rights in the constitution, the former being enforceable in a court of law and the latter not.

Constituent Assembly and Human Rights

The first meeting of the advisory committee on fundamental rights, minorities on fundamental right, minorities etc was held on February 27, 1947. Vallabhbhai Patel was unanimously elected the chairman and five sub-committees including one on fundamental rights were appointed. The fundamental right sub-committee's held three settings. At the first sitting which took place on 27th February itself, J. B. Kripalani was elected chairman.22 The general procedures and order of business for the committee were settled. Its second sitting was held from 24th to 31st March. The committee discussed in details the various draft and notes submitted by its members. The conclusion arrived at in regards to the fundamental rights report of the sub committee were

22 B Shiva Rao: The Framing of India’s, Constitution, volume II p 64
circulated to its members for their comments and suggestion on 3rd April. During that 3rd sitting on 14 to 16th April the draft report was discussed and certain clauses were revised in the light of the members comment and suggestion. The sub committee submitted its final report to the Advisory committee on 16th April.

Professor K. T. Shah emphasized that along with rights there should some obligation on the citizen. Prof. Shah said, these rights were social and economic rights and they were indispensable. K. M Munshi said that the sub committee had to consider whether the fundamental rights of the nature of mere precepts should be embodied in the constitution, if not what should be the justifiable rights. He observed that most of the general declaration and international documents had proved ineffective to check the growing power of modern state.

The precept of policy was listed under title fundamental rights. For example in the draft submitted by Munshi the rights to work, a living wages, condition of work necessary to ensure the decent standard of living and the rights of every citizen to have free primary education with a corresponding duty on every unit were included. The draft by Dr. Ambedkar contains an elaborate clause designed to establish State socialism in important fields of economic life by law of the Constitution itself. However, the subcommittee could not decide whether non-justifiable rights were to be included or not in the constitution of India. Ultimately the sub committee resolved that difference should be made between fundamental right, which were enforceable by appropriate legal process, and a provision that were in the nature of fundamental principle of social policy.

In the second meetings of the Sub-Committee held on 24th March 1947. The suggestion and memorandum on fundamental rights were reviewed. Aladi Krishna Swami Aayangar in a note submitted on 14 March 1947 emphasized to make a dissection between rights, which were justifiable, and rights, which were merely intended as directing objectives to state policy.

After examining the various draft on fundamental rights placed before it, the sub-committee finally resolved the a dissection between the rights, which were in the nature of principles of Social Policy for the guardians of government
to regulate the Legislative and Executive function was necessary before the inclusion of fundamental rights was necessary.

While forwarding its reports to the chairman of the Advisory Committee the sub-committee stated that dissection was based on the Irish Constitution model and adopted a middle course between the one adopted in the Constitution of the USA and one pursued in other European Constitutions, which had mixed up two sets of rights.

The Constituent Assembly after a brief discussion on the supplementary report of the advisory committee fundamental rights on 30th August 1947 sent it to be constitutional adviser for being adopted in the draft constitution for further consideration by the Drafting Committee in the draft constitution. All the provisions regarding fundamental rights and directive principles were included in Part III which was entitled as Fundamental Rights and some provisions pertaining to social and economic rights were included in the Directive Principles of State Policy in part IV of the Constitution. Though nothing specific was mentioned on human rights education, it gradually became clear that the fundamental rights and directive principles in particular would become a reality only when people are made aware of the provisions. This has to be done through various educational measures. Since they are being addressed separately, no discussion is entered into at this stage.

The Protection of Human Rights Act – 1993

On 16 December 1966 the General Assembly of the United Nations adopted the International Covenant on Civil and Political Rights and India was a party to it. The human rights embodied in the Covenant already stood substantially protected by the Constitution. However in view of the tardy implementation, there has been growing concern in the country and abroad about issues relating to the human rights. Having regards to this, changing social realities and the emerging trends in the nature of crime and violence, government has been reviewing the existing laws and procedure and system of administration of justice with a view to bring about greater accountability and transparency in
them and devising more efficient and effective methods of dealing with the situation\(^{23}\).

Wide ranging discussion were held on the subjects at various forum such as the Chief Ministers conference on Human Rights, seminars organized in various parts of the countries and meeting with leaders of various political parties taking into account the views expressed in the discussion on the Human Rights Commission Bill, 1993 that was introduced in Lok Sabha on 14, May 1993. The Bill was referred to the Standing Committee on Home Affairs by the Speaker. In view of the urgency of the matter, the President promulgated the Protection of Human Rights Ordinance 1993 on 28, September 1993. In the same year the Bill was referred to the President and secured President’s assent.

In Human history one can recall several examples and a number of persons who fought against injustice and worked to brings comfort to suffering humanity. The name of Mahatma Gandhi will naturally find a place of pride in such a list.

All through his life he was fighting for his countrymen. He began his public carrier in South Africa fighting against the humiliation to which Indian was subjected. He organized mass movement and Satyagarh in South Africa against racial discrimination and challenged the Government. In India he led a number of mass movements and challenged the British power. He worked for emancipation of backward classes and women\(^{24}\).

Gandhi\(i\) championing the cause of the human freedom is to be examined in the background of powerful government based on brute force with powerful instrument of violence at their commands. In the days of Gandhi the State has come to be a formidable machine, which work with wonderful efficiency by reason of the quantity and precision of its means. Once it is setup in the midst of society, it is enough to exercise their power. Whatever of the social framework, there were days when men could revolt against despotism. People could rise

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\(^{24}\) Mathur, J.S., Gandhi Champion of Human Rights, Jornal of GANDHIAN STUDIES, Gandhi Bhavan University, Allahabad Vol I April 1974
against their government and with simple weapon. Sticks, knives and the light defeat the military forces of the Central authorities. But today science and technology has placed in the hands of ruler's of nations, weapons and tools of control for persecution and coercion of unprecedented power. In such a situation Gandhi could stand like a watchtower reminding all, that in a fight for human rights, the target should be the increasing power of the state and this tendency towards centralization.

With the acquisition by the masses of the right to opposed authority they evolved their weapon of Satyagarh – Non-violence action that could be undertaken by the individuals small group and even by the nation as a whole.

In those days of organized violence unorganized violence had no chance to even register a protest. Gandhiji demonstrated in his own life time what a weapon non violent mass and under certain circumstance individual action can be in South Africa when he began his experiment with illiterate labour who had become slave labour as his soldier. He demonstrated to the world, non-violence has the capacity to test even the strongest government.

Gandhiji demonstrated in his own life what a single individual, through non-violence could do to fight against injustice and social evil. He fasted against the Communal award and the gates of temples all over the country were thrown open for the harijans.

If one aspires to harness the power of Satyagarh one must seek it with high concentration of mind. Gandhi made it clear that he was no impressible Mahatma; his life was made up of small ring, which even an ordinary individual could practice. Therefore what he achieved everybody else could. The practice of mass non-violence is the effective answer to the challenge of brute force. Non possession, bread labour, swadeshi fearlessness, truth etc were several devices through which Gandhi wanted to train people to be non-violent in thought and word and deed. Through this training he appealed to the people to fight against the denial of human rights.

The other aspect of Gandhi strategy was to strive for a socio-economic order, which will lead to the upholding of human rights through initiative that will
rest with the masses. He repeatedly made emphasis on this aspect of strategy, livid disobedience without the backing of constructive programme is criminal and waste of effort.

Another contribution of Gandhiji in the battle of fight for the human rights is the inspiration, guidance and technique of resistance based on mass participation that he provided to man in all countries. He has become symbol of human rights a fighter against oppression, exploitation and injustice. He inculcated a value system in the people that is difficult to be assured or achieved through formal human rights education.

Constitution of India and Human Rights

The Constitution of India sets out a most elaborate declaration of human rights as compared to the Bill of Rights or any other constitution of importance. The provisions of Chapter III are in detail covering a variety of topics and some are purely the outcome of peculiar social condition, prevailing in India. It aimed at building a new social structure in the place of old social order based on inequality, untouchability, caste and religious consideration and economic exploitation. The new social order envisaged in the fundamental Rights is intended to help the growth of the new sociological processes whereby an integrated, homogeneous community free from exploitation any kind and social disability of any nature can be established.\(^{25}\)

Whereas some of the Rights conferred by the Constitution are limited to citizen such as freedom of speech, assembly and cultural and educational rights, in the case of other as equality before law, religious freedom etc. such a limitation does not exist. These are applicable to citizen and alien alike.

Some of the provisions of chapter of the Constitution are of the nature of prohibition and place constitutional limitation on the authority of the State. For example, no authority of the State can deny any person equality before law or equal protection of the laws, discrimination against any citizen and no titles other

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\(^{25}\) Kumar A.C. The Indian Political System, S Chand and Company, Ram Nagar, New Delhi 1989
than a military or academic distinction can be conferred. From the point of view of individual such rights may be termed as negative rights. The remaining provision of the chapter on Fundamental Rights can be regarded as positive rights of the individuals. However no clear demarcation can be made between the two.

The Fundamental Rights place limitation on all kinds of authority that has either the power to make laws or has discretionary power. Fundamentals rights are accordingly binding on the Union Government, the State Government and the local body including village Panchayat.

The Directives Principles of State policy – The main objective of the constitution makers was to draft a Constitution of socio-economic revolution and they incorporated many provisions in the Constitution to make India a welfare state. The basic aims of a welfare state were clearly stated in the preamble to the Constitution and invariably in all of part IV containing the Directive Principle of States Policy. The directive principles provide for in particular the socio-economic rights and include the right to education.26

Fundamental rights are primarily aimed at assuring political freedom to the citizens by protecting them against excessive state action while the Directive Principles are aimed at securing social and economic freedoms by appropriate state action. The fundamental rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced with the help of court. Therefore these are made justiciable, however Directive Principles of State Policy are not justiciable.

Certain principles of states policy laid down provide that
1. Citizens, man and women equally, have the rights to education; means to a livelihood.
2. The ownership and control of the material resources of the community are so distributed as to satisfied to the common good.
3. The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

26 V. N. Shukla: Constitution of India, Revised by Prof. Mahendra P. Singh, Eastern Book Company, Lucknow 2000, Pp- 28,29
4. There should be equal pay for equal work both man and women.
5. The health and strategy of workers, man and women and the tender age of children are not abuse and that citizens are not forced by economic necessity to certain vocation not suitable there age and strength.

Human Rights Education (Development as an Academic discipline)

The topic of human rights education formed a part of the agenda of the International Conference on Human Rights held in Teheran in 1968. On 12 May 1968, the conference adopted a Resolution XX entitled "Education of Youth in the Respect for Human Rights and Fundamental Freedoms". In the Resolution, the Conference called upon all States to ensure that all means of education should be employed so that youth grows up and develops in a spirit of respect for human dignity and for equal rights... without discrimination as to race, colour, language, sex or faith." UNESCO was invited to develop the programmes aimed at making the principles of the Universal Declaration of Human Rights prevail at all levels of education...."

Paragraph 13 of the Declaration on the Rights of Disabled persons, provides that, disabled persons, families and communities shall be fully informed, by all appropriate means, of the rights contained in this Declaration". One year after the proclamation of the Disabled Persons Declaration, the United Nations Commission on Human Rights in Resolution B (XXXII) of 11 February 1976, requested that the appropriate UN organs, specialised agencies and non-governmental organisation, as well as governments, promote within their respective sphere of competence or number of measures for the development of youth in human rights, including development of a special curriculum on human rights for use in various educational systems, whether at the primary, secondary on technical level- and study of the possibility of the introduction of a special curriculum on human rights in universities.

In 1988 UN convened an International Congress on the teachings of Human Rights at Vienna in 198827.

The 1993 United Nations World Conference on Human Rights (Vienna) held the view that human rights education was "essential for the promotion and achievement of stable and harmonious relations among communities and for fostering mutual understanding, tolerance and peace", and concluded that the proclamation of a UN Decade for Human Rights Education "should be considered." Accordingly, a resolution was adopted paving for such a proclamation.