CHAPTER – I

INTRODUCTION – THE CONCEPT OF HUMAN RIGHTS, ITS ORIGIN, RELIGIOUS AND HISTORICAL DEVELOPMENT.

The concept of women’s human rights is a fairly new concept in the world and it has gained its momentum particularly, after the World Conference at Vienna in 1993 and the Beijing Declaration and Programme of action, 1995. In the context of human rights law, it may, perhaps be considered as a misleading concept to speak of women’s human rights, because throughout the substantial body of international law, there has been no attempt to define the exact sphere of women’s human rights nor to enumerate any rights which might be said to be peculiar to women’s human right. Existing International Declarations, Covenants and Conventions concentrate on the problem of discrimination in law and in practice and provide that the rights which the International community recognizes as human rights shall be available to all irrespective of their sex. In the language of United Nations Centre for human rights – “Human rights
could be defined as those rights which are inherent in our nature and without which we cannot live as a human being\(^1\). Hence, while analyzing the women’s human rights, the member states who signed the Women’s Conventions, agreed to the problem of failure to respect women’s rights solely in the terms of discrimination. Rather than, they recognized that, there is a distinct body of rights which are primarily applicable to women\(^2\).

The extension of the rights of men to include women came about by a gradual process of change in societies. Evolution and crystallization of the concept took a long time\(^3\). As a part of the changing society women play a vital role and gradually they entered into public life within the society. Hence to understand the concept of women’s human right one must look through the process of historical development. The discussion may be confined from the day, when man first started to live in groups. It is an undeniable fact that the concept of human rights, particularly, women’s human right, is very

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much the product of history and human civilization and hence it is subjected to evolution and changes. In this long continuing march of human civilization and developmental process of changing society, people tried to grapple with new situation and new environments of thought and habit, in the process of evolving new ideas, concepts, values and norms of conduct and relationship. The origin of mankind shows that the biological predecessors of human beings are homosapiens\(^4\) and gregarious in nature. Man probably acquired certain essential human characteristics in the Pliocene Period\(^5\). The record of human civilization may be thus said to begin at the moment when man was able to fashion the first stone tools that can be recognized as the first human workshop. With the development of sociological, cultural and geological order, human race traveled through different ages, like Bronze Age, Iron Age or the great civilization of India. Society came to exist through these evolutions and civilization in different forms, shapes or concepts. But the

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importance of individualism does not derogate from the society. Society confers on the individuals the vast benefit of the spoken and written language and the entire heritage of knowledge and culture. In the repeated interaction between the individual and the State, the urge to recognize a charter of basic individual rights is itself a continuous struggle against the power of established authority. Since eighteenth century onwards, there was repeated attempt to define by the society, the Civil and Political rights, but this effort was predominantly made by organized society of men for men. Women played an insignificant role in the determination of political, legal and institutional structures, both in western and eastern countries. However, these social movements were able to make only ripples, as numerous groups, such as women, ethnic and religious minorities and workers, all seeking to change their political and economic circumstances. In two volumes of history of women in Europe, Anderson and Zinseer note that feminist movements flourish during liberal revolution and decline during conservative periods. They cite the flourishing of feminism at the

6. Supra.
time of the French revolutions of 1789, 1848 and 1871, the German revolution of 1848 and the liberal movement in Russia of the 1850s. They also note its decline during the conservative or repressive periods thereafter, such as during the first and second Napoleonic empires⁷.

However, the idea of women's human rights is often cited as beginning in 1792 with Mary Wollstonecraft's book, "Vindication of the Rights of Women", published in response to the promulgation of the natural- rights- of- man theory. But the historical research has revealed a much longer gestation period, beginning at least in the early fifteenth century with the 1405 publication of Le livre de la cite des dames (The Book of the City of Ladies) by Christine de Pizan⁸.

However, the modern jurists consider the Magna Carta of 1215 AD in England as the pioneer for theorizing the present concept of women's human rights. In this Magna Carta, for the first time, the women of England were given the right to choose their own husband.

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Similarly, a widow, after death of her husband, got the right to claim her share of property, acquired at the time of marriage through inheritance.9

If we go through the recorded history and the ancient scripture, we find that the philosophers have written about equality and justice from a long ago, from which the concept of human rights may be inferred. But a real beginning was found only after the recognition of "right of man" in 1789, which, in turn replaced the original term "natural rights", the genesis of which lies on the doctrine of natural law. The concept women's rights as human rights came much much later. In the last part of 18th century, the uprising objection against the government and royalty in France and the American Colonies, generated a considerable discussion as to how nations should treat its citizens. Until this period, privileged males occupied central stage in the discussions about concept of rights, with most, if not all, such rights were understood as being solely for men. However, in 1787 the French philosopher Condorcept published a treaty on the rights of

women, holding that women had the same "natural rights" as men.\textsuperscript{10} Likewise the book entitled "Defence of Women's Rights", by English writer Mary Wollstonecraft, published in 1792 continues to inspire the agenda of feminist movements throughout the world. Her lone voices did attempt to vindicate the rights of women and a certain philosophical tradition did develop in which pleas were made for the emancipation of women and to allow them to escape their traditional domestic role and to enter more fully into the society. However, such attempts were found to be unsuccessful to include women in the human rights debate. The aim of that women's movement was mainly to achieve a place for women in a man's world and in order to accomplish that task successfully; there was a need to extend the legal recognition of rights to women. Thus the emphasis was given in both municipal and international law, only on the elimination of discrimination against women. At the international level, what has been developed is a set of legislative reform which seek to place women in the same position or situation as man. In this context, women's rights are not considered as the rights which are specific to

women, but are rather universally recognized right held by all people by virtue of their common humanity and regardless of their sex.\footnote{11} Hence, such rights are personally oriented, normatively necessary moral requirements. The existence of human right is independent and inherent to all human beings whether they are guaranteed or enforced by legal codes or are socially recognized. If the existence of human rights have to depend upon the legal recognition or sanction, then there would be no human rights prior to such recognition or sanction. But human rights are the other side of the coin of human life which is inherent to the human nature and hence or cannot live as human beings without human right. Similarly, the existence of women's human right is also not required as to its recognition or enforcement by anybody but is the inherent rights accessible by every woman.

Despite all these efforts, the principal difficulty still lies in the non-availability of an adequate substantive definition of human rights. However, the legal concept of human rights is the product of specific period of history in a given society. But in societies around the world, female gendered status is viewed as inferior and subordinate to male-\footnote{11. Ibid. (International Perspective on Human Rights. Veena Pani Pandey.)}
gendered status. Societies have modeled their gender-role expectations on those assumptions of the “natural order” of human kind. Historic social structures reflect this gender difference of male dominance and female subordination. Therefore, concern for the protection of human rights found expression historically at the national or domestic level in accordance with the varying notions of changing time. In Western part, it mainly emerged under the umbrella of the philosophical, political and legal values which gained ground from renaissances and reformation onwards\textsuperscript{12}. In the third world countries the perception of human rights had been almost linked up with duty oriented religious doctrines and teachings. Hence the emergence of these values and their development are themselves inseparable from a long historical process of economic, social, political and cultural transformation. The historical evolution of the concept of human rights reflects the untold truth of the historic subordination, silencing and imposed inferiority of women which is not simply a feature of society, but a condition of society.\textsuperscript{13}

\textsuperscript{12} Jurisprudence (Legal Theory).- Prof. (Mrs.) Nomita Aggarwal. Central Law Publication. 4\textsuperscript{th} Edi,2003. P-280.

Moreover, women throughout the world share many common experiences of violations of their rights. Hence, an effective way of studying the women's human rights is studying the rights they are being deprived of. This deprivation is on the basis of sex, which commonly accord women less favourable treatment than men. Although religious socio-political motive has been ascribed to the prevalence of sex based on discrimination, it cannot alter the fact that this sex-based discrimination derives in large part from an arbitrary division of male and female roles. Hence, a discussion on different human rights perspective, conceptualized on the basis of historical and social development will be helpful to illuminate the complicated relationship between male and female. This concept of human rights and its violation towards women through the historical evolution will lead for theorizing the concept of women's human rights and its violation.

**The Law of God and the Greek ideas of Justice** :-

Greek society was built on the concept of subordination of the individual to the community, of the citizen to the State. The identity of women was insignificant to the society. The idea of justice was a guiding principle not only for the behaviour of the individual, but also
1. Human rights & fundamental freedom (Tagore Law Lectures) Jagadish swarup.

15. Supra.
Thus, in Roman civilization, there was a clear difference between individual law and the law which is common to all. Thus the Romans separated State and individual, each having definite rights and duties. But Cicero defines the Jus Naturale as the eternal and immutable law, which will apply to all people at all times.

Therefore it is clear that though the Roman civilization recognized the universality and equality of law, but individualism had no place at all, as slavery exists in Roman Civilization. Slave practice was common in Roman civilization and there was no gender difference regarding law in practice.

The foundation of the Holy Roman empire marks an epoch in the medieval theory. In the end of Roman era, the principles of natural law got its place under the writings of Christian fathers. It was St. Thomas Aquinas, who made the classic attempt to harmonise the teachings of the Church with those of natural laws, emphasized that man's intellect and free will are the close image of God in the material universe. Thus, the medieval theory taught men that the

17. Supra.
government of the world should be vested in a universal ruler. Thus the Christian father recognized the supremacy of individual by recognizing the universal ruler. Aquinas admits that human law, which derives its validity from natural law, changes with human circumstances and human reason. But the jurists of medieval period was reluctant to discuss the changed status of women. Supremacy of law was deemed not merely man-made, but conceived as part of the unity of the universe. Women had no separate identity within such universal law. Slave practice was recognized and woman had to suffer double vindication of their rights.

**Human Rights developed by Social Contract under Natural Law:**

The renaissance and reformation led to the emphasis on the individual, free will and human liberty. They rejected the universal collective society of medieval Europe and favoured the development of independent national states. Throughout the 16th century there was a struggle against the growth of royal absolutism. Bodin was an exponent of the doctrine that kings had absolute power by divine right.

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which was fully admitted in England during the Tudor period.19 Such a theory was a necessary consequence of the reformation. However, it may be mentioned here that the original contributors to women’s human rights were those who first taught women to read and thus to explore the world outside the home and immediate community.20

The overt act of secularization of natural law begins with Grotius. He asserted that natural law would subsist even if God did not exist. Grotius’s main concern was to establish a system of international law to regulate the affairs and warfare of the rising nation states. However, Thomas Hobbes and John Locke stated that the source of natural law was not a set of naturally ordered ends of human well-being and fulfillment, but an inmate desire for self-preservation. In the words of Locke, rulers had the right to rule, to use their political power for the public good. Both Locke and Hobbes wrote with a present political object in view, Hobbes wishing to condemn the Rebellion, Locke to justify the Glorious Revolution of 1688.

19. Supra.

It was the political theory of Locke which affected the nations at large. It penetrated into France, and passed through Rousseau into the French revolution. His theory was supported and developed by Rousseau into an even more daring form of social contract. Rousseau's conception on sovereign was the people constituted as a political community through the social contract. Rousseau considered the sovereignty of the people as inalienable and indivisible. He was not a believer in representative government and his theory implies neither the complete abrogation of liberty of Government nor the complete rejection of the doctrine of rights of man and woman.\(^{21}\)

The doctrine of Locke became an outstanding mentoring process which worked out between 1688 and 1832, a system of Parliamentary Government that may justly be called the great contribution of England to Europe through French Revolution and beyond the Europe, to the other continents. The French Declaration proclaimed a number of entitlements which are now generally called civil and political rights. The basic principle that all men are born and remain free and equal in their rights, including equality before the

law, freedom of opinion and expression etc. But, during the period of French Revolution (1789), the women were extremely active in the fights against the old feudal regime. Women led demonstrations that forced the king from his palace at Versailles. Woman’s groups in Paris demanded the same political rights as men, as well as change in marriage laws and women’s social condition. One of the most outspoken advocates for women’s right during the French Revolution was Olympe de Gouges. Two years after the revolution began; she published a declaration on the rights of women and demanded the same rights for women as man. In 1793 a backlash occurred, and the French Government beheaded Olympe de Gouge and banned further political activity for women. The tragic irony in the beheading of De Gouge becomes evident when reading the French Declaration of the Rights of Man and Citizen, adopted by the French Government in 1789. That declaration referred only to men and specified numerous rights but negative for women. Thus for example, the law ought to


prohibit only those actions which are harmful to society.

During the French Revolution, the American colonists instigated their own uprising against the British. As a result of this revolution various documents expounding on the rights of man came up which include the Declaration of Independence in 1776 and later, the U.S. Constitution as amended in 1787. The Bill of rights, as amended in U.S. Constitution consists of first ten amendments to the body of the constitution and specifies certain civil and political rights. The fourth amendment guaranteed that the right of the people, whether man or woman to be secured in their persons, houses or papers and rejects unreasonable searches and seizures. The law relating to birth control, concept of constitutional liberty and right to privacy are some other developments during this period.

But the idea of women’s human rights is often cited as beginning in 1792 with Mary Wollstonecraft’s book, vindication of the rights of women, published in response to the promulgation of the above mentioned natural rights-of-man theory. It was an autobiographical novel entitled Mary based on her own experiences as the daughter of a violent father and as a governor and teacher. In her Thoughts on the Education of Daughters, Wollstonecraft urged
that the girls be taught to think and then their curiosity may be stimulated to revolutionary ideas. The distinguished feature of Wollstonecraft writing is that she was the first to put her theories in the context of a broader liberationist human rights theory of modern time. Second contribution was her emphasis on women's body and mind.24

Thus, during 17th century the social contract theory of Rousseau influenced not only the nation at large but also, stimulated the womenfolk with the revolutionary ideas of that time.

**Positivism and Human Rights**:

Legal positivism attracts another approach to the study in the field of human rights. The expression ‘positivism’ is used in contemporary Anglo-American Literature to designate any of the following: - that laws are commands of human beings, that there is no connection between law and morals etc.25 In continental literature the expression ‘positivism’ is often used for the general repudiation of the

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claim that some principles or rules of human conduct are discoverable by reason alone.\textsuperscript{26} Thus the legal positivism philosophy was very popular and had dominated legal theory during 19\textsuperscript{th} century and commands considerable allegiance in 20\textsuperscript{th} century as well. The positivist thinkers like Bentham and Austin attach much importance to the theme that law as it is should be distinguished from what the law ought to be. They considered that the law should be analyzed as it is a science of positive law. as this approach provides flexibility to face the changing needs and also under human control, hence it is considered as a realistic basis for the protection of particular rights. But this approach does not recognize the status of individual under the international law. Though H. Kelsen recognized the validity of international law, but he supported the pure theory of law under which the term “minimum effectiveness” for deriving the efficacy of grundnorm can be explained with the help of this international law.\textsuperscript{27}

\textsuperscript{26} Ibid
\textsuperscript{27} Supra.
Thus, the women, under the positive law, though have no separate laws or protective laws; still they can vindicate their rights under those laws. However, by the end of the eighteenth century, strong feminist arguments were being made on both sides of the Atlantic to promote feminist views for organized political movements for establishing women's right 28.

**Marxism and Human Rights**: -

The industrialization during 18th – 19th century led the people to leave their agricultural based activities to find work in factories, often in unsanitary condition. Factory owners frequently exploited their workers, paying them little for their efforts, Karl Mark and Friedrich Engels produced the communists manifesto in opposition to what they saw as exploitation of the working class by owners of factories and other means of production.

According to Marx, as long as the capitalists monopolize the means of production, the notion of individual rights is nothing but a bourgeois illusion.29 In fact, rights and freedoms of individual are

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28. Supra.

materially stipulated and depend on socio-economic, political or other conditions of society. Thus, Marxist theory regarding human rights can be analyzed that human right and freedoms are of a class and are materially determined by the economic condition of the society’s development. Marx wants a classless society which can be availed only by the emancipation of labour from the domination of capital. Hence, in Marx’s view, there is no difference between man and woman. All are having one recognition labour class and bourgeois class.

The whole trend of Russian historical development was based on absolute, centralized state authority and a rigid social order. It was the Marx’s ideas which began to win through the famous October revolution. Thus the Marx’s theory of economic emancipation is very much important, as the economic subordination led to the human Rights violations more specifically, of women. It may be mentioned here that the covenant on economic and social rights had been adopted by the United Nation due to the influence of Marx’s theory on economic emancipation.
Human Rights and it’s impact on religion in the Third World Countries:

Nowadays, the global scene of human rights is the religious dimension which gets its significance more and more by way of religious intolerance. There include women, who have often been overlooked or even trampled on in many traditions marked by male religious authority. Therefore a woman occupied a subordinate position under the Hindu and Muslim personal laws governing religious denomination. The personal laws were rooted in religion and the religious scripture of the Hindus and the Muslim govern not only the relationship of man with his God but also all aspects of human conduct. However, the universality of human rights is inconsistent with any religious grounding. It is true that the Universal Declaration of Human rights is not antireligious, it is not even nonreligious. Rather it provides an essential support for religions.


particularly in the third world countries that wherever human rights instruments prohibit discrimination and guarantee the right of equality before the law, religion become explicit ground of impermissible discrimination. In the third world countries, the three major religion, that people have faith are Hindu, Muslim and Buddhists. All these three religions set their concept of human rights in a bedrock of duties rather than rights. In those countries – women are normally burdened with the heavy duty of obligations towards the family and society. Hence, systemic gender inequality is more prominent in those countries under the guise of tradition, religious practice etc. Thus, in India, we still observe the practices like caste discrimination, ethnic, rape, entry restriction due to puberty in some religious mosque or temple like ‘Namgharh’. Like most of the ancient legal systems, the scriptural law traces its origin to divine revelations. During the early period, there was no distinction between religion, law and morality.  

This is one of the reason of systemic gender inequality, which led to the violation of women’s human right in the name of religion. On this

background, the three major religious practices in the third world countries are discussed below in brief:

**Hinduism and Human rights of Women** :-

Though there is no specific mention of the concept of human right under Hindu religion, still Hindu mythology recognized the common brotherhood as follows:

"No one is superior or inferior. All are brothers who should strive collectively from the common welfare", (Rig Veda – Mandala- 5, Sukta-60, Manta-5).

Thus, it implies the common brotherhood (but not the sisterhood or motherhood) to all, i.e. there is one soul, one ‘atma’, and hence it may theoretically be presumed that there is no difference between man and woman. It is, therefore, clear that Hindu religion does not mention about the superior status of man and inferior status of woman. So, the systematic gender inequality is not present within the Hindu religion.

Thus, during the Vedic period natural law philosophy had occupied an integral part of indigenous legal, social and political system in India.
However, in the later period of Vedic civilization, some type of derogatory treatment towards women can be observed from the verse of some great priests. Thus the great priest Manu compared women with household material and suggested to treat women like any other household materials. In the words of Manu “women in her childhood must remain under the custody of her father, in youth she must remain under the custody of her husband and when widowed she must remain under the custody of her sons. She must never be independent.”

Again, marriage was considered as one of the important social institutions which was normally performed with some religious usages. But the selling of daughter in Asura form of marriage among ancient Hindus is nothing but a practice of selling of daughter by father. In Assam also marriage were affected almost by purchase of bridegroom – it was common even among Brahmans. Thus, during the early period there was no distinction between religion, law and


morality. They were cumulatively referred to as dharma. Thus domination, suppression, intolerance towards women from time immemorial in the name of religious practice gives rise to a typical type of religious violation against women. It gains its extreme point when a Hindu male married a Hindu female and then is converted to Muslim and repudiate to give maintenance to that Hindu wife on the plea of conversion to Muslim.\textsuperscript{36} In the present day the religious intolerance worsen the situation world wide. The mushroom growth of trans-border terrorists on the basis of particular religious faith made the situation more complicated. The self-destructed terrorist group named themselves as ‘Jihadi’ faiths engaged in mass killing to get salvation from this world results in having a soft target of women.

\textbf{Islam and Human Rights :-}

The word ‘Islam’ means ‘peace’ and ‘submission’. In its religious sense, it connotes submission to the will of God and in its secular sense, the establishment of peace.

According to Quran, man is the gift of the God to this earth and they are the highest manifestation of universal compassion.

\textsuperscript{36} Sarala Mudgal – Vs – Union of India. AIR 1995 SC 1531.
Freedom in Islam is primarily defined by spiritual liberation, i.e. salvation of the soul. For Muslims, all Islamic Law emanates from a pure law of God, a pure law of man, or a combination of both. The human rights in Islam means the rights which have been granted by ‘Allah’ to his human beings so that they may discharge divine obligation and perform their temporal obligation with full liberty, justice, dignity and peace.\(^{37}\) The concept of equality is conceived as the rights and duties of each sex. Thus, the essential characteristic of Islam is both religious and secular; faith and law; public life and private life, and mankind is the symbiosis of the two.

But, in Arabia, the birth place of Islam, the position of women before the rise of new faith was marked with indignify, finally branded women as sensual commodity. Women were stigmatized, discriminated, discarded and to be sold in open market. A woman had no rights. She could not inherit any property, and after the death of her husband, her step sons could inherit her as a property.\(^{38}\) A man could marry any number of wives. Though prophet limited the


\(^{38}\) Supra.
number of wives into four, still women were not given the equal status with man. Moreover, by pronouncing the word ‘talak’ thrice, a Muslim male can divorce his wife without her consent. On the other hand, a Muslim woman is not given such privilege. Again, if a woman has been divorced by her husband, later on she cannot again be married by her same husband. She must be married by another person at least for one day and then has to be divorced by second husband. After that the first husband can marry that woman. However this rule is not applicable in case of her male partner.

Another discrimination in the name of Muslim religious faith is that of maintenance. If a wife is divorced by her husband she will get the maintenance only during her iddat period. After that the responsibility of maintenance is transferred to the state, if her relative deny to maintain her. This gives rise to the extreme poverty to the Muslim women. Thus the ‘law’ and the ‘reality of law’ have a great difference for accessing the human right of Muslim women. The concept of peace and submission as emanated by Muslim religious faith has little effect to those Muslim women. The ulama and the jurists maintain categorically that women have been given inferior status; some modernists among Islamic scholars would like to believe
that the holy book accords equal status to both the sexes. In India, the status of Muslim women remains the same. In Shah Bano's case, though Supreme Court of India had given judgment to provide maintenance to Muslim women, but the Parliament had passed the Muslim women's (Protection of rights on Divorce) Act, 1986, under which husband's consent is required to get the maintenance under Section 125 of the Criminal Procedure Code, 1973.

**Buddhism and Human Rights** :-

In Buddhist philosophy a clear distinction could be found as to the notions of personal definition of man and his ideals. Buddhism takes into full account the interrelationship among the deeds and actions of all individuals, classes and nations, all of which are bound to be mutually affected. The religious faith in Buddhism is pervasive in many third world countries. Buddhist belief on the law of 'Karma' and it has great impact on the daily life of the common people.

Having gone through the discussion of schools of thought and religious approaches on human right, it may be summarized that humanism is of two varieties -- religious and secular. Buddha gave five commandments (Panchashila). They are not to kill living being, not to take what is not given, not to speak falsehood, not to drink intoxicating drinks and not to commit adultery\textsuperscript{43}. Thus Buddhists emphasized the welfare of all beings as a state duty.

Hence, by discussing all the three major religion, it may be concluded that religion still remain the major divisive force in the world more particularly in India. The study of religion from different religious view shows that all religion gives women the equal status with man. But the traditional practice and oppression towards women in the name of religion, show an opposite picture. Hence the human rights law may defend the religious life of people, but at the same time, religious intolerance and illegal activities of people of religious faith towards women may lead to the violation of human rights of women\textsuperscript{44}.

\textsuperscript{43} Supra.

\textsuperscript{44} Internation Human Rights Lexicon -- Susan Marks & Andrew Elapham, Oxford 2005. 1\textsuperscript{st} Edi. P.325-326.
**Emerging Trend of Human Rights** :-

The development of international law of human rights may be said to have its root in antiquity, but a real beginning was made only during the early part of the 19th Century\(^45\). The first international measures for the protection of human rights abolition of slave practice. With the rise of imperialism, slavery had become an integral part of the colonial system established by European countries. In 1807, Great Britain took first attempt to abolish slave traffic. After that, in the treaty of Paris in 1814, Congress of Vienna in 1815, Brussels Conference of 1890 etc. were the various attempts which were made to abolish the slave traffic. Finally, the Slavery Convention of 1919 and 1926 were adopted to suppress and abolish the slave traffic completely. Though the slavery convention formally abolished the slave trade throughout the world, but flesh trade in various forms are still practicing among the nations. In the present day also a large number of women were transported from one nation to other nation apparently for the household work. But later on they are used for forced prostitution. Observing this condition of women,

United Nations, passed the Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others in 1949 for restraining flesh trade. Angelina and Sarati's anti-slavery pamphlet in 1836 was also great appeal and attention to the Christian women at that time, ultimately which brought a national attention in the south. Again in Germany, Alice Salomon, also known as Jane Addams, fought for the equal rights of women as all as other human rights of women. She experienced women working in "Surat Shops" and women suffering from hunger and disease. Later on she wrote a controversial paper "unequal payment of men's and women's work" and promoted for adult education of women. Solomon's work on peace and disarmament as well as women's right was a great attempt to protect the natural rights of women at that time.

In the early twentieth century, World War-I and its aftermath brought a shared desire to condemn war and to develop institutional frameworks for international co-operation. Before 1914, women traditionally worked in jobs where men did not want. During the war, women were required to do jobs normally done by the men fighting at

the front. Across Europe, women worked in factories and offices, drove buses and trams, dug fields, and even joined the police forces. Establishment of the League of Nation and the International Labour Organization and the inception of social welfare reflected this new mood of international, regional and national collaboration.

However, while concepts of human rights underpinned the value base of social work, no formal discussion on human right issue occurred at that time. League of Nations even could not take any notice of the regular suppression of human liberties in Fascist Germany and these acts of tyranny were recognized by many states who were the members of the League of Nation. This led the Leagure a defunct body and became insignificant due to non-co-operation of USA, USSR and Germany. The failure of functioning of League of Nations is the main cause for the commencement of the Second World War.

**Human Rights after Second World War :-**

The First World War ended with unending toil and tyranny, resulting in the growth of dictatorship and charismatic leadership with

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48. Supra.
consequent polarization of the world by the German Monarch – Hitler, which finally led to the rise of Nazism. For more than four years, the world was engaged in the war of a ferocity and scale never seen before. In 1937, with Hitler’s invasion into Poland, World War-II began, involving more countries and areas of the world than the first global conflict. The war which lasted from 1939-45 involved every continent, and few countries or people remained untouched by the carnage⁴⁹. Finally the unconditional surrender of Germany and Japan unveiled the threat to future generation, which urged for effective protection of Human right to achieve the international peace and progress. This resulted the concerted effort in Atlantic Charter, 1941 ; U.N. Declaration, 1942 ; Moscow Declaration, 1943 and Dumbarton Oak Proposals which were the basis of the work of the United Nations Conference on International Organization which met in San Francisco in 1945 and completed the Charter of the United Nations. The very preamble of the U.N. Charter stated the determination of the peoples of the United Nation to reaffirm faith in fundamental human rights, in the dignity and worth of the human

⁴⁹. Supra.
person, in the equal rights of men and women and of nations large and small\textsuperscript{50}. As a part, participants of the U.N. charter draft agreed to establish a Commission in 1946, The Commission submitted its Draft declaration on human right to the General Assembly. But at that time the United Nation consisted of 56 member countries. Most of those countries were located in America, Europe and the Soviet Union. A few Arabic countries were also members, but Africa and Asia had little representation because of colonization by European countries\textsuperscript{51}. Thus Universal Declaration of Human Rights (UDHR) was adopted in 1948, but in a strict sense it cannot be said a unanimously accepted universal organization.

Finally, on 10\textsuperscript{th} December, 1948, the General Assembly adopted the Universal Declaration of Human Rights (UDHR) drafted by the commission under the chairpersonship of Mrs. Eleanor Roosevelt. Though the declaration passed unopposed, the entire Soviet Block, Saudi Arabia and South Africa abstained from voting because of objections to certain provisions within the declaration. Hence the


\textsuperscript{51} Ibid.
Universal Declaration of Human Rights did not become a legally binding document. It is later on, that the declaration received the status of Jus Cogens or Customary Law. However, the declaration does not contain any special provision for women. The language of the Declaration refers to “man” and uses the pronoun “he” when referring to individuals, without mentioning whether ‘he’ includes ‘she’ or not. Although the Declaration introduced innovative and progressive rights for everyone, the articulation of those rights reflects a male-dominated world by incorporating generally male perception and priorities. The concept of Human rights had not expanded sufficiently to account for the social, economic, cultural and political circumstances in which a woman’s identity is shaped and experienced. Essentially, the feature of human rights documents and principles to sufficiently highlight the equal status of woman to man led to a need to specific recognition that women’s rights are human rights52.

The movement to promote women’s right as human rights began in the year following the Universal Declaration. In 1966 the

52. Ibid.
United Nations adopted two international covenants, i.e., the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which give more force to human rights as specified in the Declaration. However, these documents did not highlight the pressing need to address women's right as human right. Countries ratifying those treaties signified a greater commitment to human right at least on papers. But, the specific recognition of women's entitlement to human rights did not yet seem to appear.

For the first time, in 1975, the United Nation organized a World Conference on Women in Mexico City. At this conference, those attending find out a link of the oppression of women to their inequality, Leaders at the conference also urged governments to eliminate violence against women. To improve the status of women, leaders acknowledged that much more strategy needed to be accomplished. Therefore the U.N. proclaimed the next ten years as the "Decade of Women".

Five years after its first World Conference on women, the U.N. in 1980 held its second United Nations World Conference on Women

53. Supra.
in Copen Hagen, Denmark. At this conference, delegates from the U.N. endorsed the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This convention aimed to place women on an equal footing with men within any field, including political, economic, social and cultural arenas. Social workers have called this convention as the Magna Carta for the human rights of womenmètre, The Convention establishes a bill of rights for women with internationally accepted standards for achieving equal rights. The spirit of CEDAW recognized that women remain the object of major discrimination which violates the principles of equal right and respect for human dignity.

In the year 1985, the United Nation leader held the 3rd World Conference on women in Nairobi, Kenya. The final document of the Nairobi conference, known as the Nairobi Forward Looking Strategies for the advancement of women, identified areas of concern to women and children, including violence, poverty, health and education. The purpose of the conference was to appraise the current status of women and violation of their rights.

54. Supra. P.150.
But the other subsequent international instruments regarding women have provided support for recognition that women’s human rights are just and valid as human rights in general. Thus in 1992 the U.N. conference on Environment and development held in Rio-de-Janerio, Brazil recognized the role of women in sustainable development environmental protection for future generation. The Rio Earth Summit urged for the protection of the earth against global warming and green house effect. It was contended that women can play a vital role to save the earth for the future generation by using less machinery in daily house hold work, as those machine release more Carbon monoxide which enhance the greenhouse effect.

In 1993 the Second World Conference on Human rights was held in Vienna, Austria. By the time this conference convened the notion that “Women’s rights are human rights”, which become a central tenet of thousands of advocates all over the world. At the Conference, women submitted the U.N. delegates a petition that demanded the recognition of violence as an abuse of women’s human rights. The participants also held for establishment of an international tribunal for violence, where women may present documented and
moving cases of gender-based abuse. The final declaration at the Vienna Conference affirmed again that women's rights are human rights. For the first time, many governments officially recognized the women's human right\textsuperscript{55}.

Two years later, in 1995, at the World Summit for Special Development, governments acknowledged that, to combat poverty and social disintegration - women would have to attain equality. Government also acknowledged that poverty is another form of violence against women\textsuperscript{56}.

Finally, in September 1995, the much publicized U.N. 4\textsuperscript{th} world conference on women took place in Beijing. With the hope of accelerating progress in advancement of women's right, delegates adopted a final document referred to as Platform for Action (PFA), which expressly stated women's right as human right. The Platform also recommends the measure to promote the status of girl child, noting that the girl child of today is the woman of tomorrow.

The Platform inspires many positive developments regarding women. But the primary difficulty in transforming the Platform


\textsuperscript{56} Ibid. P.150.
from mere words to action lies in its nonbinding legal status. No Government is obliged to follow directives or strategies outlined in the Platform. Thus, the Platform becomes cumbersome, thereby losing clarity. Despite its shortcoming, the Platform still embodies an admirable effort to present an agenda for advancement of women in society.

After the Beijing Conference, efforts began to realize the areas of critical concern listed in the Platform for Action. As a part of the ongoing process of promoting women’s rights, government representatives at the Beijing conference decided to meet again in five years to evaluate their progress towards implementing the Platform for Action. This evaluation process was known as the Beijing +5 Review, which ended in a special session of the U.N. general assembly in June 2000 at New York. The formal document to evaluate the achievements and obstacles to fulfill the goals of the Platform for Action was called as the “Outcome document”\textsuperscript{57}.

The Beijing +5 Review involved a multitude of voices and perspectives. The aspect of ‘globalization’ played a more significant role in the Beijing +5 Review. Delegates directed the attention toward

\textsuperscript{57} Supra
negative impacts on women and gender differences in globalization, privatization and economic restructuring. Overall, the Beijing five plus review reaffirmed that, as like any other area of human rights, women's rights can be enshrined in gold-plated ink, but will have little meaning, if the will to recognize those rights fails. Without understanding human right and their importance, laws simply (national or international) are not enough to ensure the actual recognition of human rights of women. As in the contemporary world the concept of sovereign authority over individual have gradually lost its ground as the concept of human rights have been elevated to the level of common international standard. This human rights regime has drawn its legitimacy from a number of arrangements like the customary and general international laws, charter of the United Nations, Jus Cogens, multilateral treaties, covenants and commonly accepted human rights instruments by the informed state practices and values of the contemporary civilization regarding State Obligation. With regard to state obligation to the human rights treaties and instruments, the Government of India has either made reservation or

declarations in spite of accepting the universality of the instruments and adhering to the nonderogable human right normative structure. Therefore, comprehensive analysis regarding the international human right instruments and their evaluation and limitations in the field of contemporary Indian society are considered to be appropriate for discussion in the next chapter.

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