CHAPTER - II

EVOLUTION OF HUMAN RIGHTS
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I. Introduction

The best among the creatures of almighty is human being. They possess intellect and are capable of using reasons which distinguish them from the other living organism within the society. Men live within a society in an organized manner. They need food, shelter and clothing; desire lives with dignity and seek peace and tranquillity. By virtue of their inquisitive mind they deserve the credit of developing the idea of ‘right’ and ‘duty’, ‘right and wrong’, ‘justice and injustice’, ‘equality and inequality’, ‘bonafide’ and ‘malafide’. As such, in the present day world rights and duties start from the inception of a child in the mother’s womb and even after the completion of last rituals.

‘Human rights’ as a term or expression is comparatively of recent origin in its formal shape. Only after the formation of the United Nations in 1945 followed by Second World War, this term is formally and universally recognized. Prior to this, the term used in their street were natural rights, basic right, fundamental right, and inalienable rights. Human rights are the rights which are possessed by every human being, irrespective of his or her caste, race, religion, sex, place of birth, and nationality. Human rights are those rights which are inherent in one’s nature and without which one cannot live. Since human rights are not created by any legislation, they resemble very much the natural rights. They cannot be abrogated by any legislation or even cannot be subject of amendment. Karel Vasak has aptly remarked that the ‘human rights’, which are essentially individual in character, for they are meant to be enjoyed by individuals, constitute a social phenomenon by virtue of those for whom they are intended. After adoption of the Universal Declaration of Human Rights 1948, it is generally recognized that human rights
have ceased to be a matter of domestic concern and have become a matter of international concern.²

II. Origin of Human Rights

In Greece

The origin of human rights is traced, by some scholars, back to the time of ancient Greece. The fact that the human rights were recognized as natural rights of man is illustrated by a Greek play Antigone. In this play, Sophocles describes that Antigone’s brother, while he was rebelling against the king, was killed and his burial was prohibited by the King Creon. In defence of the order, Antigone buried her brother. When she was arrested for violating the order she pleaded that she had acted in accordance with the immutable unwritten laws of heaven, which even the king could not override.³

Even before the development of natural law by stoic philosopher, the Greek citizens enjoyed some basic rights such as rights to freedom of speech (Isogoria), the right to equality before law (Isonomia) and right to equal respect for all (Isotemia).⁴

The stoic philosophers formulated the theory of natural law with the principle that natural laws were universal in nature. Their application was not limited to any class of persons of certain states; rather it applied to everybody everywhere in the world. They further set forth that the men could comprehend and obey this law of nature because of their common possession of reason and capacity to develop and attain virtue. In this way stoic philosophers were able to preach the idea of universal brotherhood of mankind and laid stress upon the equality and freedom of all.

In Rome

The people of Rome were more practical in nature. They applied the stoic conception of natural law in formulation of body of legal rules for administration
of justice. Acting in this manner, they were able to modernize their old law and laid stress upon the incorporation of high ethical standards in legal procedure. The Romans described their legal system as consisting of two ingredients. Gaius pointed out that “all people who are governed by laws and customs apply partly their own laws which is common to all mankind, the law which each people has made for itself is peculiar and it is called its jus civile, the special law of the state; but that which natural reason has appointed for all men is in force equally among all people and is called its jus gentium, being the law applied by all races”. Roman thus applied partly its own law and partly that common to all men. This theoretical view of jus gentium a law common to all mankind became the current coin among the jurists as well as fundamental basis of every legal system.

By the end of the dark period, which followed the fall of Rome in 467 A.D., and with the commencement of the Holly Roman Empire in 800 A.D., theories of natural law began to enter into new premises. During the middle ages, men sought for a law that was founded on something more enduring than the wills of men, which could furnish an element of unity in the battle against chaos and an element of protection against the arbitrary will of a sovereign.

In searching for a principle by which the power of the state could be justified, writers evolved a theory of social contract. There were, indeed, different varieties of doctrines but the predominant medieval compromise was that the monarch was above the positive law, but was bound by natural law. This necessitated a complete severance with the Roman view that natural law is immutable and universal part of civil law. In middle ages a tendency aroused to regard natural law as a superior body of principles by the test of which the validity of positive law is to be judged. Thus in middle ages, the scholastic philosophers like Augustine, Thomas Aquinas laid stress upon the concept of natural law as the higher principle of law to be derived from reason. But they did not go in quest of making the human personality as the main concern of law and social life.
The origin and development of the concept of human rights first started in Greece. It has been observed that the people of Greece and Rome had more valuable contribution in the development of human rights, particularly the people of Rome. The people of Rome were very systematic and in their hands human rights reached its zenith.

**III. Classical Period of Natural Law**

During 16th and 17th century which is also known as classical period of natural law, the philosophers like Hobbes, Locke and Rousseau took the help of the notion of ‘social contract’ to explain the relationship between individual and society. The upholders of ‘social contract’ theory considered human rights as the natural rights for the reason that human rights are based upon the contract concluded by the people with the state. They explained that when men entered into contract to form political society they renounced some of their natural rights but certain basic rights such as right to life, right to freedom, and right to equality were preserved by them. These rights so preserved constituted their natural and inalienable rights which must be respected by the state or government.11

Prof. John Rawls (1921) of U.S.A. in his book “A theory of Justice” 1971 also speaks for the rights which are essentially of the character of human rights. His first principle ‘equal maximum liberty principle’ means that there were some rights like freedom of speech and association, the rights to vote and stand for public office, liberty of conscience, freedom of thought, freedom of persons and property, freedom from arbitrary arrest which every system must respect. These are rights which may not be sacrificed to increase the aggregate welfare level.12 The second principle is that the social and inequalities are to be arranged so that they are both; (a) to the greatest benefit of the least advantaged, consistent with the just saving principle and (b) attached to offices and positions open to all under conditions of fair equality of opportunity. With the aid of these principles, Rawls tries to establish a just basic structure. There has to be a constitutional convention to settle a constitution and procedures that are most likely to lead a just and
effective order. Legislation and its application to particular cases come after. Prof Rawls claims that in this way the basic principles will yield a just arrangement of social and economic institutions.

Ronald Dworkin (born 1931, U.S.A.) in his famous work ‘Taking Rights Seriously’ 1977, argues in favour of fundamental human rights. For Dworkin anyone who professes to take rights seriously must accept the ideas of human dignity and political equality. He argues in favour of fundamental rights of equal concern. Quite contrary to this, the Marxists who propagate more on economic rights to that of civil and political rights, in fact also argue for fundamental human rights. According to this group of jurists, unless the achievements of the upliftment of the society or community are made in economic sphere higher freedom of individuals cannot be achieved.

The nineteenth century marked a decline in the popularity of natural law theories. David Holmes, who may be said to have destroyed theoretical foundations of natural law, showed that ‘reason’ as understood in the systems of natural law confused three different things, namely; inevitable and necessary truths, relations between facts or event and reasonable human conduct. Natural law theories assume that there are rational principles of behaviour which are as such of universal and necessary validity. Apart from the rejection of reason as the guide to action, there are many other reasons as well which led the destruction of natural law theories in the course of nineteenth century.

Natural law ideology which greatly suffered in the course of 19th century witnessed a new line of thought developed in the 20th century. In the twentieth century, the beginning of a functional and relativist approach started. Theories of law become secularized, pragmatism emerges as a philosophy and advance of science turns the mind of men into materialistic channels. Another group of jurists of 20th century regard the protection of human dignity as a paramount objective of social policy. Following a value policy oriented approach based on the protection of human dignity, they point out the demands for human rights, demands for wide
sharing in all the values upon which human rights depend for effective participation in all community value process. According to them there are eight independent values upon which human rights depend. They are (1) respect, (2) power (3) enlightenment (4) well being (5) health, (6) skill (7) affection and (8) rectitude. The ultimate goal of the exponent of the theory is to ensure a world community in which there is democratic distribution of values, all available resources to be utilized to the maximum and where paramount objective of social policy is the protection of human dignity.

Classical period is notable for development of human rights. The jurists belonged to classical period made attempt to development of human rights. They developed the social contract theory and established that human rights are natural rights. Further, they found reasons, just and equity is within the concept of natural rights. However, it has been observed that the jurists of classical period gave more emphasis on natural rights. The concept of human rights got more solid and concrete shape after the decline of classical period and in the beginning of 19th and 20th century.

IV. Human Rights Consciousness

It is observed from the history of mankind that men desire to live within the society with certain dignity by maintaining the status as a human being. They seek justice, fundamental rights and basic freedom against the action and in-action of the governing authority. Whenever there occurs a violation of these rights, people became conscious and as a last resort take recourse to revolution. The revolutions in London, America and also in India are some of the instances which paved the path of modern human rights into various degrees and forms. Such a revolution compelled or obliged the ruling authority to grant certain rights to the exploited and deprived right seekers.

The first major grant of such rights, which one may call human rights, by a ruler was ‘Magna Carta’ signed by king John of England at Runny made in 1215.
A.D. The Magna Carta (also called Magna Charta) or the great charter of liabilities of England to the English born on June 15, 1215 was in response to the heavy taxation burden created by the 3rd Crusade and Ransom of Richard I captured by Holy Emperor Henry VI. The English Barons protested the heavy taxes and were unwilling to pay the king without some assurances in their rights. The overreaching theme of Magna Charta was protection against arbitrary acts by the king. Land and property could no longer be seized, judges had to know and respect laws, taxes could not be imposed without common council, there could be no imprisonment without a trial and the merchants were given or granted the right to travel freely within England and outside England. The Magna Charta also introduced the concept of jury trial in Clause 39, which protects against arbitrary arrest and imprisonment. Thus the Magna Charta set forth the principle that the power of the king was not absolute. In 1216-17 during the reign of John’s son Henry-III, the Magna Charta was confirmed by Parliament and in 1297 Edward-I confirmed it in a modified form.

Although the Magna Charta applied to privileged elite, gradually the concept was broaden to include all Englishmen in the Bill of Rights in 1689 and eventually all citizens. The Magna Charta formed the platform for parliamentary superiority over the Crown and to give documentary authority for the rule of law in England. In addition to the above, the writings of Thomas Aquinas and Grotius also reflected the view that human beings are endowed with certain eternal and inalienable rights.

The expression “Fundamental Rights of Men” was stated in the declarations and constitutional instruments of many states. For instance, the Declaration of Independence of Thirteen United States of America in 1776 (The Virginia Declaration) the Constitution of United States of 1787 with amendments in 1789, 1865, 1869 and 1919 specified a number of rights of man. The Virginia Declaration of Rights affirmed that all men are by nature equally free and independent and have certain inherent rights. The French Declaration of the Rights
of Men and Citizens of 1789 stipulated that men are born remain free and equal in respects. It led other European countries to include the similar provisions in their respective states. Thus the term 'human right' came somewhat later in the vocabulary of mankind.

**American Revolution**

The American Revolution originated in the Colonial revolt of 1763. There were many factors which contributed towards the rise of this revolt. For instance the growing importance of the notion of natural rights, teachings of the writers of the social contract theory like Hobbes, Locke, the British Bill of Rights of 1689 and coercive action of George III (1760-1820) and his predecessors. The British government in the last half of 18th century started to take various regulatory measures under which it introduced certain new taxes. This resulted into militant opposition by the American people. To overthrow the tyrannical government, they were laid to make the Declaration of Independence on July 14, 1776, drafted by Thomas Jefferson. This document says

'We hold this truth to be self-evident that all men are created equal, that they are endowed by their Creator with certain inalienable rights that among these are life, liberty and pursuit of happiness. That to secure these rights governments are instituted among men deriving their just powers from the consent of the governed that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it and institute new government'.

Thus Americans made their claim for independence on the basis of inalienable rights of men.

**The French Revolution**

The French Revolution was based upon those principles which were set in motion by the English and American Revolution. It differed mainly in that it was basically the result of economic and social inequalities and injustices of the French
ancient regime. All categories of people like, lower classes clergy and nobility being specially influenced by Rousseau claimed that it marked dawn of new age for the mankind in general and believed in prospect of right reason and natural rights such as right to life, liberty and the pursuit of happiness. The governments in their opinion must preserve and safeguard these rights and if they fail to do so they have no right to remain in existence.\textsuperscript{17}

By the end of 1891, list of inalienable rights of free citizens was prepared as the "Declaration of Rights of Man and of the Citizens" through which the birth rights of the citizens which they had lost were now restored. Again every person was entitled not to be accused, arrested or imprisoned except in accordance with the procedure prescribed by law.

Due to such revolutions took parts in the different part of world brought consciousness of human rights in the minds of the people. These revolutions took place as a result of exploitation on the part of the state. The Magna Charta is a result of such revolution. These revolutions emphasised in safeguarding the basic human rights of people as non-derogable.

V. Religions and human Rights

Legal systems were influenced by religions and faiths. Civilized codes explicitly spelling out human rights qua human rights, did not exist. Even so, theologies and philosophers fertilized the soil where the rights of men, of groups and denominations could flourish. The history of human rights would be incomplete without tracing their sources in the history of plural religions spreading universal values sustaining social systems. Philosophers, kings who founded religions and radiated enlightenment enriched human heritage through the centuries. Rights cannot exist without a legal order. It is, therefore, pertinent to examine the religious roots of human values.\textsuperscript{18}
Islam

The word Islam is of Arabic origin 'aslam a' meaning thereby complete submission before the will of Allah. Its other meaning is 'peace'. Starting from the birth of the universe Allah sent different messengers (Nabi and Rasul such as Hazrat Adam, Hazrat Nooh, Hazrat Hood, Hazrat Looth, Hazarat Musa, Hazrat Ibrahim, Hazrat Ismail, Hazrat Isa, Alaihimum = salato-o-sal’lam) at different times upon different communities, who preached the unity of Allah. The Last preacher of Islam Hazrat Mohammad (May Allah peace be upon him) born on 570 A.D. was sent in the material world as a mercy to the universe. The complete code of life the 'Quran' is revealed upon him. It is not practicable to focus all the aspects of 'Quran' dealing with law, liberty, equality, freedom, within the few lines. However, an attempt is made to highlight the human rights aspects through 'Quran' and Sunnah.

It is the command of Allah that one should honour one's parents, help one's relatives, help the poor, who are not related, help the orphan and the wayfarer. Indeed the essential unity of making is described in one passage of the Quran as being a 'single soul'.

Regarding the much misunderstood aspect like, polygamy, the Holy Quran says 'And if you fear that you cannot do justice to orphans, marry such women as seem good to you, two or three or four but if you fear that you will not do justice then marry only one or that your right hand possess. This is more proper that you do justice.'\(^{19}\) So, it is seen that polygamy is permitted in a very restricted sense.

Regarding life liberty and security of a person the Holy Quran says “Do not take away life that Allah has made sacred except when the law so demands.’ The prophet further held that “The believer in Allah is he who is not a danger to the life and property of another.” More importantly, the dictate of the holy Quran in respect of justice is “And when you judge between persons, judge the justice”.

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Privacy is also attributing of human dignity. The Quran seems very particular about maintaining the privacy of the individual. It is commanded by the Holy Quran; “O believers; enter not houses of others until you have asked him for permission”.20

Regarding the rights of non-Muslims the prophet says, “Remember, if any Muslim exploits the non-Muslim, infringe his right, force something out of his capability, and possesses something taking forcefully, then at the day thereafter (Yaomal-Qiyamah) I shall be in favour of the Non-Muslims before the court of Allah.”21

Equality, the status of women, the rights of less privileged, working class, orphan, treatment to other, safeguard of property, need of education, economic and social reforms all are enshrined in the Quran and Sunnah.

Shortly before his departure from worldly vision the prophet (d) at Arafat at the Hajjiatul – Wrida (The farewell pilgrimages) emphasized the unity of humanity, the brotherhood between Arab and non-Arab and the concept of Ummah. Allah has made you breathe on one to another, so be not divided. An Arab has no preference over a non-Arab, nor a non-Arab over an Arab, nor is a white one to be preferred to a dark one, nor a dark one to white one.22

**Hindu Law and Human Rights**

The Hindu considered their law as a revealed law. The theory is that someone among us, our great rishis, had attained such spiritual rights that they could be in direct communication with God. The revealed law has come to us in the form of four Vedas. The assumption is that the later developments, the Smrities, the Digest and Commentaries are nothing but expositions of the sacred law contained in the Vedas, which are considered to be the source of all knowledge. On the premise emerges the concept that Hindu law is a divine law. And being divine law, it is sacrosanct, inviolable and immutable.
The Smriti is a comprehensive code to regulate human conduct in accordance with the unalterable scheme of creation, and to enable everyone to fulfil the purpose of his birth. The whole life of men, considered both as an individual and as a member of groups (small or large) as well as men’s relation to his fellow men, to the rest of animated creation, to superhuman beings, to customs generally and ultimately to God, come within the purview of Dharmashastra.23

The Smriti texts don’t make any clear-cut distinction between rules of law and rules of morality or religion. The philosophical theories that the Hindu propounded and the theological belief that they held, made it but natural that there was blending principles and concepts. In most of the rules and institution ethical and legal principles have been woven into one fabric. For instance marriage, sonship, adoption, debts and succession have both secular and religious aspects. There is no denying that all those concepts and institutions have stark earthly bases, they are deeply rooted in the society, because they emerged out of social needs.

The importance of moral aspect of law is further brought into clear relief by the enunciation of the principles of Nyaya (Justice) and Yukti (reason). No decision should be made exclusively according to the letter of the shastra, for a decision devoid of yukti, failure of Justice occurs. The courts were enjoyed not to enforce a rule of law if its enforcement would lead to injustice. The smritikaras deal with the perennial problem of conflict between law and justice by laying greater importance on justice. According to them, justice should not only be by the letter of law but it should also be equitable, justice in accordance with reason.

Law (Dharma) is the king of king; no one is superior to law. The law aided by the power of the king (Sate) enables the weak to prevail over establish his rights against the strong.24 Kautilya in his Arthasastra states about the ideals for a king; “The happiness of his subject lies to the happiness of the king, in their welfare is his welfare.”25
Dharma pervades throughout the Hindu philosophical thought, and the Hindu sociological structure. Law is, in this sense, considered as a branch of Dharma. According to Manu, Dharma is what is followed by those learned in Vedas and what is approved by the conscience of the virtuous that are exempted from hatred and inordinate affection.\textsuperscript{26}

Human rights and obligations, the powers of the state and their limitations are not only alien to the dynamic concept of dharma but are its very core, assuming the texts to be reflective of the fact of the life. Hindu judicial system laid stress on the independence of judiciary, in fact which is very vital to protect the right of the people. The case of Anathapindika V Jetu, reported in the Vinaya Pitaka, is a shining illustration of this principle. There is a prince and a private citizen submitted their case to the law courts, and the court decided against the prince. The prince accepted such a decision as a matter of course and as binding on him.\textsuperscript{27}

Indeed, in practice, how far Hindu jurists fulfilled the common people’s rights, their expectation of egalitarian goodness, economic fair deal and secular non-discrimination in a society at castes and outcastes is notoriously in the negative. Swami Vivekananda accused the ancestors of oppressive culpability and ante – poor insensitivity. To quote, “Our aristocratic ancestors went on trading the common masses of our country under foot, till they became helpless, till under this torment the poor, poor people nearly forgot that they were human being that they were made to believe that they were born as slaves”.\textsuperscript{28}

However, the greatest contribution to posterity made by the Hindu tradition was the broadmindedness, sympathy and the toleration of different new points exhibited almost alone in India amongst the civilized communities of the earlier days. When Egypt persecuted and wounded out the Jews, when racial and communal conflicts disfigured the History of Babylon and Nineveh, and later on one could see that in the states of Greece and Rome, slaves formed the basis of those marvellous cultures, and when in the medieval ages the baiting of Jews
alternated and vice-versa, one had the spectacle in India of unfailing hospitality to foreign and foreign cultures.

Religions govern human rights. It has been observed that the most of the religions have impact in the promotion and protection of human rights. The religions guide the people what is to be done and what not to be done, what is just and what is unjust. The concept of human rights thus has entered within the parameter of religion.

VI. United Nations and Human Rights

Human rights became a matter of international concern with the end of World War II and the founding of the United Nations. Since then human rights has been developing in an unprecedented way and has become a very substantive part of international law as a whole. The Charter of United Nations represents a significant advancement so far as faith in and respect for human rights is concerned. The appalling atrocities of the Nazis against Jews and against other races during the Second World War led to a strong movement for the international protection of fundamental human rights, and the United Nations Charter contains numerous references to them. As a matter of fact, the makers of the United Nations Charter were determined that the rights of individual be made an international concern.

The provisions of the concerning human rights run throughout the United Nations Charter 'like a golden thread'. Much of the credit for this goes to determined lobbying by non-governmental organizations at the San Francisco Conference. The Preamble, Article 1, 13(1)(b), 55, 56, 62(2), 68 and 76(C) are some of the provisions of the United Nations Charter for promotion of human rights and fundamental freedoms. In addition to these above provisions, the United Nations Charter has referred repeatedly the concept of 'fundamental human rights', 'the dignity and growth of human person', 'equal rights', 'justice', 'social
progress’ and fundamental freedoms. The United Nations Charter has devoted three Chapters to the self determinations of peoples.

There are six primary organs of the United Nations under the United Nations Charter. All the six principal organs of the United Nations, such as, the General Assembly, the Economic and social Council, the Security council, the Trustship Council, the International Court of Justice and Secretariat make effective contribution to promote and protect human rights and fundamental freedoms throughout the world. In addition, there are four specialised agencies, namely, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization and the Food and Agricultural Organization of the United Nations are successfully carrying out their activities in the human rights field.

It cannot be said that the Preamble and the various Articles of the United Nations Charter on the subject signify a full and effective guarantee of human rights on the part of the family of the nations. All the aforesaid provisions and in particular, the mandatory provision, the Article 68, envisages the setting up a Commission for further development of human rights. Accordingly, in February 1946, the Economic and Social Council, the main organization established the Commission on Human Rights. After giving due consideration to various proposals on the part of the member states, the Commission on Human Rights prepared the Universal Declaration of Human Rights which was adopted and proclaimed by the General Assembly on 10th December 1948. Every year 10th December is celebrated as human Rights Day

**Universal Declaration of Human Rights**

The Universal Declaration of Human Rights was adopted by the General Assembly by a vote of 48 to nil with eight abstentions. The Declaration has been hailed “as a historic event of the profound significance as one of the greatest achievement of the United Nations”. The Universal Declaration enumerated the
basic postulates and principles of human rights in most comprehensive manner. It deals with not only civil and political rights but also with social and economic rights. Article 2 to 21 deals with those civil and political rights which have been generally recognized throughout the world while Article 22 to 27 of the Declaration deal with economic and social rights.

The Universal Declaration has enumerated human rights for all the people. They are common to all cultural relations and adoptable to a great variety of social systems. In other words, it has made human rights universal but they are not universally accepted due to political, economic and social limitations. The Declaration represents a milestone in the history of human rights. It has helped to give contour and content to the generalities of the Charter reflecting the spirit and the needs of the day. Fawcett has remarked, “It is the mine from which other conventions as well as national constitutions protecting these rights have been and are being quarried.” The provisions of the Declaration have been used as a basis for various types of actions taken by the United Nations. They have inspired a number of international conventions or covenants, both within and outside the world organization. In some notable instances, the text of the provisions of the Declaration was actually used in international instruments or national legislations. The Declaration has become one of the best known documents of all times and it has exercised a powerful influence the world over. The contents of the declaration have been cited as justification for action taken by international institutions.

Jurists may argue that the said Universal Declaration does not carry with it legal effects as the principles contained in it are not as such binding on member states, but this document would be considered as an epoch making event in the evolution of history of human rights. The Declaration can be characterized as a model code, which, if accepted and adopted by member states in their national constitutions and legislative enactments, it would be useful and will have legal
effects. The Declaration however, does not have the force of law. It is not a treaty, but an international endorsed statement of principles.

Other Conventions on Human Rights

The Declaration of Human Rights was followed by International Covenant on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights 1966; and Optional Protocol to the International Covenant on Civil and Political Rights, 1966. It may be noted further that the General Assembly of the United Nations on 15th December 1989 adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of death penalty. The Second Optional Protocol came into force on 11th July 1991, in accordance with Article 8 Para 1. With the adoptions of two Covenants and two Optional Protocols, the United Nations completed the task of formulating the international standard of human rights of the individuals. They together along with the Universal Declaration of Human Rights are considered to have constituted International Bill of Human Rights.

In addition to the above there are various other international legally binding conventions, resolutions and conference on human rights. These are Slavery Convention of 1926, and Protocol thereto; the Declaration of Rights of the Child 1959; United Nations Declaration on the Elimination of all Forms of Racial Discrimination 1963; Declaration on the Elimination of Discrimination Against Women 1967; Declaration on the Protection of All Persons from being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975; the International Convention on the Suppression and Punishment of the Crime of Apartheid 1973; International Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitutions of others 1949; Supplementary Convention on the Abolition of Slavery; the Slave Trade and the Institutions and Practices Similar to Slavery 1956; Convention on the Prevention and Punishment of the Crime of Genocide 1948; Convention on Status of Refugees 1951; Convention on the Political Rights of Women 1952; Convention Relating to

For the enforcement of human rights and fundamental freedoms, a number of special bodies have been established in accordance with the international conventions dealing with particular aspects of human rights. These bodies devote their full time and energy to monitor the enforcement of the provisions of those conventions. Generally, these bodies supervise the enforcement of the relevant international human rights conventions by reviewing the information received from all reliable sources including reports from state parties, inter-governmental and non-governmental organizations and communications alleging violations of human rights obtained from or on behalf of the victims of such violations. Apart from such procedures as of good offices and urgent action have been adopted to meet the exigencies.43

In addition to above the United Nations Economic and Social Council and International Labour Organization have devised their own supervisory system to consider and deal with state's reports, the complaints concerning the application of human rights conventions adopted by these organizations and with the question of interpretation of the human rights instruments. The Commission on Human Rights established by the Economic and Social Council in 1946 has started playing an important role in the supervision, protection and enforcement of human rights. It has established a number of subsidiary bodies such as, the Sub Commission on Prevention of Discrimination and Protection of Minorities, the Adhoc Committee on Periodic Reports, the Adhoc Working Group of Experts on Human Rights in Southern Africa and other working groups with different tasks. The Commission is empowered to carry out studies, make recommendations and drafts international instruments concerning human rights. In addition, it also undertakes special tasks
assigned to it, including the investigations of allegation concerning violation of human rights.\textsuperscript{44}

Moreover, there are regional arrangements too for the promotion and protection of human rights. The Vienna Conference on Human Rights (1993) stated in its declaration that general arrangements play a fundamental role in promoting and protecting human rights. They reinforce human rights standards as enshrined in international human rights instruments and ensure their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of co-operation with human rights activities.

However, the progress in this direction has been very slow. There are only three such regional agencies which could have been established for the promotion and protection of human rights. There are (1) European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (II) American Convention on Human Rights 1969; (III) African Charter on Human and People’s Rights 1981. The regional Conventions or Charters work for ensuring protection of human rights in their respective regions. All Regional Conventions on Human Rights, in fact, refer and reaffirm United Nations Charter provisions concerning human rights and the Universal Declaration of Human Rights. In addition to these, there is also Arab Commission on Human Rights held in Beirut in December, 1968. This Commission has been described as an arrangement for the promotion and not for protection and enforcement of human rights. Attempts to establish similar agencies in other regions have also been made by the states belonging to regions. For example the Bankok Congress of South – East Asia and Pacific Jurists discussed for the drafting of an Asian Convention on Human Rights. Again, a proposal for a like convention was put by the International Commission of Jurist in the Conference held in Ceylon in January, 1966. The United Nations has constantly promoted regional co-operation in the Asia Pacific region for the achievement of the basic objectives of the United Nations or to promote universal
respect for and observance of human rights and fundamental freedoms. The General Assembly and the Commission on Human Rights have adopted a number of resolutions in this regard. The Office of the High Commissioner for Human Rights within the framework of technical co-operation and advisory services in the sphere of human rights organized a seminar in 1982 in Colombo and since then seven workshops have been organized, notably in Manila in 1990, Jakarta in 1993, Seoul in 1994, Kathmandu in 1996, Amman in 1997, Tehran in 1998 and in New Delhi in 1999.45 Through these workshops an agreement has been made that regional arrangements must come out and be directed to the needs and priorities set by governments of the region with roles, tasks, outcomes and achievements by consensus.

Apart from, there are numerous non-governmental organizations at national, regional and international level which are engaged in bringing out the cases of violations of human rights and finding out ways and means to prevent their occurrence. Their reports draw the attention of the world towards such violations and it has vast impact on national governments. Some such international non-governmental organizations are International Committee on Red Cross, International Committee of Jurists, and Amnesty International.

Recently the United Nation has taken a number of steps for creating an awareness and mobilization of opinions regarding protection and promotion of human rights. In addition, a World Conference on Human Rights generally known as Vienna Conference was held at Vienna in 1993. The Conference renewed the international community’s commitment to the promotion and protection of human rights. It called for specific measures designed to strengthen international human rights instruments and monitoring mechanism and to improve co-ordination of United Nations activities for the furtherance of human rights.46

The concept of human rights got importance and shape formally after the formation of United Nations. It was the devastation of Second World War which compelled the world community to protect the human rights in a formidable way.
It has been observed that the United Nations Charter for the first time paved the way for protection and promotion of human rights in international level. The branches of the United Nations have been playing significant role, particularly the General Assembly and Security Council.

**VII. Human Rights in India**

India became independent on 15th August 1947 in accordance with the Independence of India Act 1947. The Act was enacted by the British Parliament. It made a provision for setting up of two independent Dominions in India, to be known as India and Pakistan. The task of preparing the Constitution India was entrusted to the Constituent Assembly. The Assembly appointed various Committees to draft the different articles of the Constitution. The reports of these Committees formed the basis on which a new draft of new Constitution of India was prepared in February 1948. The Preamble of the Constitution of India declares India to be a ‘sovereign’, ‘secular’, ‘socialist’, ‘democratic’ and ‘republic’.

The inclusion of list of fundamental rights and freedom in a written constitution was not a new idea to the freedoms fighters and constitution makers of India. The idea of incorporation of a “Bill at Rights” had been conceived by the founding father of the American Constitution and it gained much currency after the First World War that the constitution of many European states invariably included Bill of Rights. The Indian leaders felt the need of a Bill of Rights not because it was the fashion of the time but because it was inevitable to restrain the government from acting arbitrarily.

As a matter of fact, there were two schools of thoughts in India which subscribed two different views regarding incorporation of a list of fundamental rights in a written constitution. One school of thought, which represented the protagonists of British constitutional system, rejected the idea of inclusion of a list of fundamental rights in the Constitution. This school held the view that the incorporation of a “Bill of Rights” in a written constitution was unnecessary,
unscientific and more often harmful. This view later reflected in the report of the Simon commission, submitted prior to the formulation of the Government of India Act 1935. It observed that though Bill of Rights had been inserted in many European Constitutions after the war, experience had not shown them to be any great practical importance. Abstract declarations were useless unless there existed the will and means to make them effective.\textsuperscript{50} The statement clearly had reference to the constitutions wherein declarations of fundamental rights remained as a trite remark and pious wish without sufficient means to enforce them, but not to the Constitutions which rendered the declaration of fundamental rights effective by enforcement measures stipulated in the Constitution itself.

The second school of thought, which represented the views of the vast majority of the Indians, supported the incorporation of a list of fundamental rights in the Constitution. Eminent persons who constituted this school of thought had sufficient experience of arbitrary and merciless measures adopted by the British executive against the national leaders during the freedoms struggle and also of the steps taken by the government to suppress with impunity such valuable rights as freedom of speech, freedom of association, freedom of the press, and personal liberty. Naturally, therefore, they felt that only a written guarantee of individual liberty or rights could deter any government from acting arbitrarily.

In addition to this, there is another factor which influenced these men that was the existence of the minority communities in India which were nursing a feeling of helplessness against any possible arbitrary rule of a majority community and a fear of insecurity. The protection of cultural, religious and other interests of the minority community was considered as a necessary condition for a free democracy. Indian leaders, thus strongly felt the need for incorporating the list of fundamental rights in the Constitution. Their determination reflected in the Nehru Committee Report of 1928 and later in the Karachi Resolution on Fundamental Rights 1931. The Constitution recommended in the Nehru Committee Report 1928, contained a complete chapter on Fundamental Rights. It enlisted a number of
rights. Like earlier documents it reiterated personal liberty, freedom of religion, freedom of speech and assembly, free elementary education and equality before law. However, it made the remarkable job by incorporating social welfare provisions in the fundamental rights. It imposed a duty on the Parliament to engraft laws for maintenance of health and fitness for work of all citizens, securing of a living wage for every worker, the protection of motherhood, welfare of children, and economic consequence of old age, infirmity and unemployment. Similarly Karachi Resolution is also a very important document. It formulated fundamental rights integrated with economic programmes. It included a number of welfare provisions and policies too, such as living wages for industrial workers, limited hours of work, healthy conditions of work, protection against economic consequences of old age, sickness and unemployment, protection to women workers and prohibition against employment of children of school going age in factories. These declarations were reiterated in subsequent resolutions of the Congress as well.

The Indian leaders who participated in the Round Table Conference immediately before the enactment of the Government of India Act 1935, pressed that a bill of rights should be included in the proposed Constitution Act for India, but unfortunately, the fundamental rights did not find mention in the said Government of India Act 1935. This Act, however, was not accepted by the principal political parties. The demand that fundamental rights should form a core of the constitution continued. And finally, the Cabinet Mission strongly recommended the formulation of an advisory committee to go into the question of formation of a list of fundamental rights. But by then the hopes which had been aroused by the Cabinet Mission Plan had vanished and the shadow of partition which, for a time, seemed to have lifted fell heavily on India. The major political parties accepted partition. The British Government strictly implemented this decision by passing the Indian Independence Act 1947. The power was transferred to the national government and a Constituent Assembly was formed for farming
the Constitution. Thus, it was in 1947 when Constituent Assembly to frame a constituent for India, it was decided that a list of fundamental rights should be incorporated in the Constitution. The Constituent Assembly which framed the Constitution, stated. "This Constituent Assembly declares its firm and solemn resolve to proclaim India as an independent, Sovereign Republic and to draw up for her future governance a Constitution wherein shall be guaranteed and secure to all the people of India, justice; social, economic and political, equality of status and opportunity before the law, freedom of thought, expression, belief, faith worship, vocation, association and action subject to law and public morality."

This found a very bold expression in the preamble of the Constitution of India. The statement made in the preamble regarding rights of individuals finds elaborate expression in part III and part IV of the Constitution of India dealing with the Fundamental Rights and Directive Principles of State Policies.

The part III of the Constitution of India guarantees to the people certain rights and freedoms. This is the general scheme. Allan Gledhill says that taken as whole the Indian fundamental rights are dynamic realities. The interpretation of the rights has often demanded an approach of a kind not contemplated by ordinary rules of interpretation of statute. Bearing a few exceptions, the fundamental rights secured to the individual are limitations on the state action. They are not meant to protect persons against the conduct of private persons. Private action is sufficiently protected by ordinary law of land. One of the main characteristics of our fundamental rights is their justifiability when the Constitution Assembly set about its task of defining fundamental rights it realized that in the absence of any legal procedure for their enforcement mere enumeration of such rights will be meaningless. To provide, therefore, speedy and less expensive remedies, it borrowed the concept of prerogative writs and invested the higher courts with the power to issues orders and directions in the nature of writs.

However, these fundamental rights are not absolute. They are subject to reasonable restrictions imposed by law in the interest of common good or general
welfare. The scope and limits of these restrictions are expressly provided in the constitution itself. Thus, no greater restriction than the one permitted under the constitution can be imposed upon these fundamental rights otherwise it would amount to their infringement.

The Directive Principles of State Policies enshrined in Part IV of the Constitution of India are aimed at securing social and economic freedoms of the people by appropriate action. They are the embodiment of the principles of social engineering and ideals of social order that contain popular aspirations and expectations of the people, more particularly, the ideals of economic democracy. They are in the nature of directions to the legislature and the executive that they should exercise their authority in such a manner as to ensure due respect for, and observance of these principles. Although these directions are not enforceable by the courts, are nevertheless fundamental in the governance of the country. They are the imperative basis of state policy and the Constitution of India directs the state to apply these principles in making laws. Moreover, the courts look to these directives as yardstick for determining the reasonableness and public purpose. Besides these constitutional provisions, several laws have been enacted with a bearing on protection and promotion of human rights in the country. Some of the important laws are the Protection of Civil Rights Act (1955), Immoral Traffic (Prevention) Act (1956); Dowry Prohibition Act, (1961); Bonded Labour (System) Abolition Act (1976); Child Labour (Prohibition and Regulation) Act 1986; Juvenile Justice Act (1986); The National Commission for Women Act (1990); the National Commission for Minorities Act (1992); Right to Information Act 2005 and the Domestic Violence Act 2005.

India being one of the largest democracies in the world always pays high respect to human rights. She has shown her interest in establishing and stringing a national institution for the promotion and protection of human rights. That is why the National Human Rights Commission has been established under the Protection of Human Rights Act, 1993 and is in conformity with the Paris Principles adopted
at the First International Workshop on National Institutions for the Promotion and Protection of Human Rights held in Paris in October 1991, and endorsed by the General Assembly of the United Nations in Resolution 48/134 of December 20, 1993. The Commission is an embodiment of India's concern for the promotion and protection of human rights. In early 1990s India felt the need of establishing a Commission as a positive response to the criticisms of the foreign Government in the context of political unrest and violence in Punjab, Jammu Kashmir and North-Eastern states. In addition to the pressure from the foreign Countries, pressure was added from the domestic front as well as for the creation of a National human Right Commission, because of the awareness among the people for the protection of Human Rights. All this led the Government to decide to enact a legislation to establish a National Human Right Commission of India.55

Moreover, in order to specially protect, promote and redress the grievances of human rights violations and for some other reasons, it was decided by India to establish National Human Rights Commission. On 28th September 1993, the President of India promulgated an ordinance, which established a National Commission of Human Rights.56 Provisions for setting up of similar Commissions at a state level were also made in the ordinance. Thereafter, a Bill on the Protection of Human Rights was passed by Lok Sabha on 18th December, 1993 to replace the Presidential Ordinance. The Bill became an Act after it received the assent of the President of India on 8th January 1994 which is known as the Protection of Human Rights Act. The purpose of the Act is to provide for the constitution of a National Human Rights Commission at national level, State Human Rights Commissions in states and Human Rights Courts at district level for better protection of human rights and for matters connected therewith or incidental there to.57 Despite the above mentioned activities for the promotion, protection and observance of human rights, there are still countless violations of human rights. The process of ensuring legal guarantees for human rights protection requires a collaborative effort on the part of the three wings of the state, legislature like executive and judiciary. Merely
legislating human rights guarantees is not enough. The process of execution of laws must be informed by human rights values.

India has been paying great importance in promotion and protection of human rights. The Constitution of India has addressed the issues of human rights under its various provisions, particularly under Part III and part IV of it. The Constitution of India not only prescribes rights but also establishes the mechanism for protection and effective remedy of these rights. Moreover, it has been observed that India has taken various legislative and administrative measures specially quasi judicial bodies to safeguard and protection of human rights.

VIII. Conclusion

It is true that in recent years, there has been a growing concern in India for protection and enforcement of human rights, but that is not enough. Still vast remain to be done in this matter. The Protection of Human Rights Act requires a more sophisticated theory of state responsibility. The task is not for the United Nations alone. The protection and promotion of human rights should be viewed as a national and indeed a community and an individual responsibility as well as international one.
References


6. Ibid.


24. Radhakrishna S., “Bhagwat Gita”.


27. ibid.

28. Ibid. at p. 117.


34. ibid.

35. General Assembly Resolution No I/5 of February 16, 1946.


37. The eight abstentions were: Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukrainian SSR, USSR and Yugoslavia.


45. This workshop was held from February, 16 to 18, 1999. It was participated by 29 countries from Asia and sub-regions.


49. The terms "Socialist" and "Secular" were added by 42\textsuperscript{nd} Amendment of the Constitution of India Act, 1976.


51. B.N. Rao, "India's Constitution in the Making", Edited by B. Shiva Rao, Appendix-A.

52. Allan Gledhill, "Fundamental Rights in India", (2\textsuperscript{nd} Edn.) p. 16.


