Chapter: 1

Human Rights: Origin and Development

The term ‘right’ indicates a behavior, action, or a policy that is morally good or justified; required by law or duty.\(^1\) In subjective terms, right connotes power to exact or to do something.\(^2\) Consequently, right entails one to decide how he/she is to be treated by other individuals, society and government. Generally, it is considered that, rights stem from two realms, positive law and natural law. Positive law refers to the laws of the state and natural law refers to laws that are based on nature of the individuals that are instrumental in formation of moral principles of the society. Jack Donnelly defines human rights as:

> “the rights one has simply because one is human being.”\(^3\)

Human rights are the rights of the person by virtue of being human; in other sense, every human being has inherent dignity irrespective of one's background, color, citizenship and faith.\(^4\) Every one possesses the equal human rights by virtue of humanity. Human rights are dynamic which evolve according to the changing needs of the humans in different contexts. On these lines, Ackerly writes:

\(^2\) Lalfakzuala, *Human Rights in Deuteronomy*, p.3.
“Not only have “human rights” been developing within and between states, in treaties, in national legislatures, in international courts, in United Nations sponsored meetings, and in activist’s networks, but also, because they have been developing institutionally, they have been developing as a system of knowledge and values.”

Human rights can be of different nature, like civil rights, economic rights, political rights, without these rights one cannot grow and enjoy life as a human being. Human rights are considered as inalienable rights, because one cannot cease to be a human, irrespective of his/her mental or social status, and behavior. In other words, no entity has the right to deny human rights to anyone. Therefore, human rights are neither dependent on any government or social structures nor derived from any legal or socio-political structures. They are derived from rational human nature that is believed to be common to all human beings. In civil society law is needed for effective implementation of the human rights. However, when the legal system of the society or regime of the state does not respect human rights then there is an issue of human rights violation, which needs to be addressed.

The glimpses of human rights can be found when ethical rules and customs formulated in some of the earliest societies for appropriate behavior and attitude towards other human beings. These ethical rules or

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customs are not human rights as understood today. Nonetheless, they reflect values such as human dignity, equality and fairness. The concept of human rights as we understand now was unknown in ancient and medieval times. Rights were conferred on certain categories of people only, like in Athenian Democracy, certain citizens of Athens had certain privileges like, to participate in cultural events and political decisions and others were excluded.

The Magna Carta of 1215 CE, is considered as an important milestone in the human rights struggle, where the freemen English feudal lords intended to restrain the king from arbitrary arrest or punishment of any kind. Consequently, Magna Carta was only concerned with baronial liberties rather than universal human rights. However, the irony of the human rights was that many groups fought for their rights, but later they realized that they prepared ground for new groups to demand the same rights from them, ultimately these rights were to be pronounced as common to all humans.

Enlightenment was significant phase in the history of western philosophy in 18th century CE. In enlightenment period reason was considered as a primary source for legitimacy and authority in all the aspects of all life. Taking reason as a primary source enlightenment thinkers questioned the traditional institutions, customs, moral beliefs,

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political structures and economic structures. ‘Natural Law’ developed by enlightenment thinkers like John Locke and Thomas Hobbes in 17th and 18th century CE, played a tremendous influence in the formative stages of human rights. Consequently, American and French revolutions produced ‘American Declaration of Independence,’ and ‘Declaration of the Rights of Man and of the Citizen’ in 18th century CE.

The universal concept of rights in above mentioned documents are based on universal human nature as propounded by natural law. However, the concept of universality understood in 18th CE was not worldwide in scope, and these rights were incorporated in constitution and applied only to the citizens of the state. Nonetheless, not all the citizens enjoyed the privileges, particularly women, children and slaves who were excluded fully or partially from possessing the rights. In this regard, Eva Brems quotes Olwen Hufton:

“The mainstream enlightenment conception of the human right was that of the man able to fend for himself in the free market economy. Black slaves as property, women and children as dependents upon fathers and husbands, and even servants did not initially qualify for inclusion.”

The drafters of ‘American Declaration of Independence’ were supporters of slavery and did not consider women as equal to men.

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Similarly, in France, women were not given equal status with men. In 18\textsuperscript{th} century CE, Olymbe de Gouges was executed, as she demanded to include women to be full subjects of rights and proposed ‘Declaration of Rights of Woman and of the Female Citizen.’ This gender discrimination was based on enlightenment thought, that rights are based on universal human nature derived by the reason, and women were considered as naturally irrational. On these lines, ‘French National Convention’ confirmed in the year 1973 CE, that:

\begin{quote}
“children, the insane, minors, women, and prisoners, until their rehabilitation will not be citizens.”\textsuperscript{10}
\end{quote}

The people colonized by Europeans were also denied the equal rights along with European and American citizens. Therefore, Eva Brems concludes that exclusivist concept of rights in 18\textsuperscript{th} and 19\textsuperscript{th} century CE, also reflected in the international politics. International Law was limited only to a few states that recognized each other, and not all the countries that are not civilized according to European standards, therefore considered as “barbarian” or “savage” which can be conquered and colonized.

\textsuperscript{10} Ibid., p.19.
Perspectives on Human Rights

The different perspectives on human rights are categorized under the notion of ‘Three Generation Rights’ envisioned French jurist Karel Vasek. These categories of rights are based on the three themes of French Revolution; Liberty, Equality and Fraternity. The first generation rights are civil and political rights, second generation rights are concerned with equality in socio-economic and cultural rights, and third generation rights are solidarity rights. All these three generation of rights are integral in nature, in this regard, Burn H Weston writes:

“The three generations are understood to be cumulative, overlapping, and, it is important to note that they are interdependent and interpenetrating.”

First generation rights are largely seemed to be influenced by John Locke’s philosophy of Individual rights: self-preservation and right to property. Locke places tremendous importance on individual as moral agent and rational being with inherent liberty. Although the idea of liberalism has been there for many centuries, it was formulated as doctrine in America only in 18th century CE. Along with Locke, Jean Jacques Rousseau, also played a significant role in developing individual rights, and democracy, commonly known as liberal democratic tradition. The

12 Ibid.
liberal idea imposes restriction on state to interfere in the life and activities of individual and their interests. Rousseau, in his book \textit{Social Contract}, demonstrates that all power is derived from people whose will is all the time sovereign.\textsuperscript{13} By Rousseau’s work, individual rights became the key element in the politics of the state.

The ‘American Declaration of Independence’, clearly demonstrates the individual spirit of liberal doctrine; this declaration paved the way for similar declaration in the succeeding human rights history of liberal societies of the west., In this regard, O. P. Chauhan states that:

\begin{quote}
“These rights have been identified as “important, moral and universal”. They are Essential for individuals, to develop their personality, their human qualities, their intelligence, talents, and conscience and enable them to satisfy their spiritual and higher needs.”\textsuperscript{14}
\end{quote}

Consequently, an individual structures his/her socio-political and economic activities, without any external interference. By this it is to be seen that an individual has capacity to make choices without infringing on other’s rights. In this regards, Jeremy Waldron writes:

\begin{quote}
“The idea of rights is based on a view of the human individual as essentially a thinking agent, endowed with an ability to deliberate morally, to see things from others’ points of
\end{quote}

\textsuperscript{13} Cited in, Shimreingam Shimray, \textit{Theology of Human Rights: A Critique on Politics}, p.27.

Thus, liberal doctrine fosters a resistance to political absolutism. The liberal political doctrine guarantees: freedom to practice any religion, freedom of speech, and right to property. Liberal concept of rights gave an impetus to human struggle leading to emancipation from feudalism to the growth of capitalism. However, these rights can be claimed only in an organized society or state and not in anarchy. Nevertheless, liberal rights conceived against the state to resist the arbitrary authority.

In contrast to first generation rights, the second-generation rights demand state intervention to secure “equitable production and distribution of the values or capabilities involved.” The liberal philosophy was contested by socialist tradition; one of the key promoters of socialist tradition was Karl Marx. Karl Marx philosophy had a great influence in the history of international politics. Marxism places a great significance on society as whole rather than on individuals. Therefore, Marxism focuses on collective rights rather than the rights of individuals. The underlying criterion is that, individuals are benefited when society as a
whole is benefited. Therefore, welfare of the society as whole sets limits to the liberty of the individuals.\(^{19}\)

Karl Marx contended that liberal tradition of individual rights is actually rights of the bourgeois; the elite and dominant class of the society, which controls the access to natural resources and means of production.\(^{20}\) According to Marx, bourgeois rights enable them to access the natural resources and production, and deprive the rights of the proletariats. Therefore, for Marx, liberal rights are not based on human dignity but on market value. The working class without any access to resources and production lacks consciousness, and power to assert its rights. As the liberal tradition promotes equality and dignity only in theoretical sense, camouflaging and protecting the *de fault* economic inequalities of the society.\(^{21}\) Therefore, Marxism by curtailing the individual rights protects the masses from exploitation by few élites. Marxism believes that without economic security and equality, there is no use of civil rights.\(^{22}\)

Third generation rights are mainly promoted by third world countries; developing and underdeveloped countries. According to Burn H


Weston, third world countries demand, global redistribution of power, wealth and other capabilities. Some of the rights demanded by third world countries can be right to socio-political and cultural self-determination, right to economic development, rights to participate and benefit from common heritage of humankind, right to peace, sustainable environment and humanitarian relief in calamities and disasters. All these rights are presented as collective rights, which demand concentrated efforts at global level.

Therefore, survival and liberation become two corner stones of third generation rights. The promoters of third generation rights insist that there is a ‘trade-off’ between individual civil rights and right to equitable socio-economic and cultural rights. To achieve latter one needs to forego the former, especially in third world countries. There is a possibility that, the elites of Asian countries, in order to defend their sovereignty, cultural values and in some cases to defend their totalitarian regime assert for third generation rights. The above mentioned elites reject the first and second generation rights as product of western philosophy, and alternatively present their socio-cultural values, under the notion of ‘Asian Values’.

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23 Ibid.
24 Ibid.
Institutionalization of Human Rights

After the First World War and with rise of Nazism and Fascism, the need for freedom, protection of minorities, and refugees was intensely felt. Consequently, in the year 1920 CE, the 'League of Nations' was formed with forty two nations. The primary goal of the league was to secure international peace and security through negotiation, arbitration and collective security. The Charter of League of Nations did not develop definition or description of rights and freedom but only made broad reference to individual rights.26 The primary goal of the league was to secure international peace and security through negotiation and arbitration. However, League of Nations was also concerned about issues like, abolishing slavery, forced labor, prostitution, child labor, and global health problem. It aimed to secure fair and humane conditions of work and just treatment of indigenous people by their colonizers.27

The slavery commission, appointed by League of Nations fought slave trading and forced prostitution all over the world, for instance, it obtained a commitment from Ethiopian government to eradicate slave trading.28 It worked with Liberia to stop slavery and forced labor. Commission of Refugees looked after the affairs of refugees, especially ex-prisoners of war. It took interest in repatriation and resettlement of

26 Ibid., p.20.
27 The United Nations and Human Rights, p.4.
refugees. After the first world war, throughout Russia, there were two to three million refugees and the commission helped half a million refugees to return home.\textsuperscript{29} It also took care of stateless people. League of Nations had limited influence over it member nations. It was unable to stop powerful nations from violating human rights. Leaders like Adolf Hitler and Mussolini never obliged with the ‘League of Nations’ instead withdrew their membership. Consequently, League of Nations ceased to exist in the year 1946 C.E. The failure of League of Nations provided a situation for nationalists like Fascist and Nazis to reign in terror. In this regard, Michelin R. Ishay, comments:

\begin{quote}
“The inability to construct viable human rights mechanism to secure either liberal or socialist rights in domestic and global politics during the inter war period provided the fertile soil for the spread of particularistic trends.”\textsuperscript{30}
\end{quote}

The Nazism and Fascism were the greatest threat to democratic process and individual rights. Persecution of minorities, genocides, militarism, and inhuman treatment in occupied territories were common phenomena before and after the Second World War. This situation necessitated the need of international body to maintain international peace and promotion of human rights. Consequently, United Nations was established in the year 1945 C.E.

\textsuperscript{29} George Scott, \textit{The Rise and fall of the League of Nations}, p.59.
Initially the United Nations Charter was signed by 51 countries but at present most of the countries in the world are signatories to the charter. The preamble of the charter highlights the maintenance of peace, security at global level and respect for human rights. The Charter is the foundation for all the international documents on human rights.\textsuperscript{31} Charter neither catalogues nor defines human rights but refers to it broadly. Consequently, there was need to develop a document to specifically define and describe rights based on the provisions of the Charter. ‘Article 68’ of the United Nations charter directs ‘The Economic and Social Council’ to establish a permanent commission on human rights.

As per the direction of ‘Article 68’ of the charter, the Commission for Human Rights was constituted and one of the primary agenda was to draft a document on human rights based on the provisions of the Charter.\textsuperscript{32} Under the leadership of Eleanor Roosevelt, the wife of former United States president, Franklin D. Roosevelt, the commission comprised of members from contrasting backgrounds, Pen-Chung Chang, was Confucian philosopher, Charles Malik was a Lebanese spokesperson for Arab league, Rene Cassin a Jew, who lost his relatives in holocaust.

Above mentioned composition of human rights commission indicates that, United Nations wanted a truly Universal Declaration,

\textsuperscript{32} Johannes Morsink, \textit{The Universal Declaration of Human Rights: Origins, Drafting and Intent}, p.3.
covering different world views on human rights issues across the globe. The above mentioned commission circulated questionnaire to thinkers and writers from member states so that inputs from different philosophies, cultures, religions would be considered while drafting the declaration, by this endeavor the drafters were attempting to think beyond the narrow limits of western tradition. Consequently, the Human Rights commission drafted, 'Universal Declaration of Human Rights' and it was adopted by United Nations General Assembly without a single dissenting vote on 10th December of 1948 CE. The resolution for the adoption of ‘Universal Declaration of Human Rights’ was supported by 48 votes, and 8 nations abstained from voting and two nations were absentee.

The preamble of ‘Universal Declaration of Human Rights’ mentions that, all human beings possess equal inalienable inherent dignity, and this moral principle is considered as the foundation for global freedom, justice and peace. Members of the United Nations need to observe the above mentioned precept in the preamble, and give fundamental freedom to all people, irrespective of race, sex color, birth etc. The ‘Universal Declaration of Human Rights’ was proclaimed by the ‘General Assembly’ as, ‘Common Standard of Achievement’ for all people and all nations to the end that every individual and every organ of

society. Consequently, member nations of United Nations shall strive by education to promote respect for these rights and freedom. Members of United Nations are expected to take progressive measures both at national and international level to secure universal and effective recognition and observance of human rights, both among the people of member states and among the people of territories under their jurisdiction.34

Rene Cassin, one of the main drafter of the ‘Universal Declaration of Human Rights’, identified four pillars of the document: dignity, liberty, equality and brotherhood.” The first two articles of ‘Universal Declaration of Human Rights’, can be categorized under the first pillar, dignity. These articles talk about human dignity shared equally by humankind, irrespective of race, nationality, religion, and creed. Third article mentions about right to life and security.

Rest of the Articles, talk about liberty, equality, especially in socio-economic arena, and can be classified under second-generation rights. Articles twenty-seven and twenty eight constitute third generation rights of post colonial era, where third world countries claim national solidarity rights to share equally heritage common to humankind and benefit from all the socio-economic and scientific development.35 It is seen that each of the categories of rights mentioned above represent a historical milestone

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in the history of struggle for human rights. Adoption of ‘Universal Declaration of Human Rights’ was a significant milestone in the history of human rights. ‘Universal Declaration of Human Rights’ became a standard reference all over the world, and foundation for human rights movements. ‘Universal Declaration of Human Rights’ influence and evaluates government policies. No government can afford to ignore these standards and all the governments bound to feel their impact at home and in external relations.36

‘Universal Declaration of Human Rights’ possessed moral and political authority. It became a standard to measure the conduct of the governments. And it is reflected in constitutions of many nations, and judiciary. The balanced approach in accommodating different genres of rights made ‘Universal Declaration of Human Rights’ to withstand the test of time in spite of many criticisms.

All the Articles of ‘Universal Declaration of Human Rights’, start with the word, “Everyone” or “No one” or “Men and Women” this implies that the rights enshrined in ‘Universal Declaration of Human Rights’ are meant for all the human beings without any discrimination.37 ‘Universal Declaration of Human Rights’ balances different perspectives on human rights. The range of issues covered in ‘Universal Declaration of


Human Rights’ are personal rights to life, nationality, recognition before law, protection against torture, and protection against discrimination based on race, sex, color, and nationality. Article twenty nine, mentions an injunction that everyone has an obligation and duty towards community that enhances the full development of an individual.

The Legal rights covered in ‘Universal Declaration of Human Rights’ are rights to fair trial, protection against arbitrary arrest, arbitrary interference with one’s family, home or reputation. Rights to food, health care, right to work, rest, leisure and social security come under the gamut of economic rights. Social rights include right to education, rights to participate in cultural life of community. The ‘Universal Declaration of Human Rights’ not only mentions rights but calls for a transformation in different spheres to realize the human rights enshrined in it. ‘Universal Declaration of Human Rights’ is a comprehensive system of rights, which are proclaimed as indivisible, interdependent, and interrelated, this fact has been recently endorsed in Vienna Declaration adopted in World Conference for Human Rights in 1993 CE.

To make the precepts of ‘Universal Declaration of Human Rights’ to be implemented there was need to convert it into treaty form so that the signatories will be more accountable in implementing the human rights.

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Consequently two covenants; ‘International Covenant on Civil and Political Rights’ and ‘International Covenant on Economic, Social and Cultural Rights’ were adopted by United Nations. The above mentioned two covenants and ‘Universal Declaration of Human Rights’ are commonly called as 'International Bill of Human Rights'. These covenants included for reporting, and monitoring the compliance of human rights under the leadership of United Nation Economic and Social Council. Subsequently, based on the provisions of the United Nations charter and ‘Universal Declaration of Human Rights’ many treaties were adopted and ratified.

During six decades of ‘Universal Declaration of Human Rights’, there has been a considerable progress in the implementation of human rights. There is a growing awareness and mobilization for human rights even in the states where there is no respect for human rights. The rights mentioned in ‘Universal Declaration of Human Rights’ may not have been realized in all the countries but people all over world, are realizing the rights due to them. The ‘Universal Declaration of Human Rights’ continues to provide an inspiration to the human rights movement.

The unrealized utopian provisions of the ‘Universal Declaration of Human Rights’ remind the enormous efforts needed in focused direction. ‘Universal Declaration of Human Rights’ is strictly universal; it applies to all human beings, and globally binding. Human rights in ‘Universal
Declaration of Human Rights’ are inherent, inalienable, and inviolable, demanding state obligation to respect, protect or fulfill people’s human rights. It serves not only individuals, among rights-holders are also collectivities such as nations (peoples) and ethnic and religious minorities.

On 25th June, 1993 CE, Vienna Declaration was adopted by the representatives of 171 member states of the United Nations. The conference was attended by seven thousand participants from the broader spectrum of the society, two third of the participants were from grass-root level. The main agenda of Vienna World Assembly was to evaluate the progress made in implementing human rights and address the obstacles in the field of human rights. Concept of universality and democracy mentioned and asserted in ‘Universal Declaration of Human Rights’ was challenged from different countries, especially countries of East Asia. The indivisibility of human rights was questioned, some countries tended to give priority to economic and collective rights at the cost of individual and civil rights. In addition, there were growing voices for third generation rights, which are described in the earlier section.

The above mentioned issues set the agenda for Vienna conference, which is highlighted in the statement made by United Nations, Secretary General, Boutros Boutros-Ghali in Vienna at the opening of the World

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Conference. Boutros mentioned that, the Vienna conference need to be guided by three important requirements, which are supposed to be considered as three imperatives for Vienna conference. The first imperative is universality of human rights, in this context Boutros mentioned that, the human rights continue to evolve in the history, meeting the needs of various people without losing universality as their essence. Second imperative according Boutros: guarantee of the human rights upheld by states in any differing situations by effective mechanism and procedures. Finally emphasizing democracy as third imperative, Boutros mentioned that, only democracy can guarantee human rights within states and communities. In accordance with Boutros speech the first article of the ‘Vienna Declaration and Program of Action’ solemnly affirms that:

“Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.”

Vienna Declaration, strongly endorsing democracy mentions that, democracy empowers the people to determine their own political, economic, and social status. Therefore, democracy, development, respect for human rights and fundamental freedoms are interdependent and reinforce each other. And it is the responsibility of the international

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43 Ibid., p.25.
community to promote democracy in the entire world. Apart from the above mentioned concerns, Vienna Declaration also addressed the issues like development, poverty, apartheid, ethnic cleansing, racism, gender discrimination, external debt, terrorism, refugees, minority people, torture, cruel punishment, judicial systems, human rights education, good governance, issues of migrant workers and rights of indigenous people

**Contemporary Trends in Human Rights**

Since its inception, ‘Universal Declaration of Human Rights’ is assailed from different quarters, and surrounded by many debates. An inquiry into the origin, nature and content of human rights leads to host of conceptual hurdles one needs to overcome to accept the human rights as authoritative. There is a need to evaluate criticism from different quarters. In this section, the significant debates like, the source of human rights, philosophical foundations for human rights, universality and cultural legitimacy of international human rights corpus are analyzed.

The concept of human rights is thought to be the product of western secular philosophies, but time and again this view has been challenged. One of the strongest challenges to the above mentioned view was posed by George Jellinek, who was constitutional historian and legal theoretician. He published a book, ‘The Declarations of the Rights of Man and Citizens: A contribution to Modern Constitutional History.’ In the
above mentioned book, the author asserts that declaration of human and civil rights in the French revolution is not responsible for the historical origin for the codification of human rights as commonly assumed. He also points out that, continuity between natural law and human rights cannot be overestimated, as the concepts of natural law could never lead to the institutionalization of human rights unless there was a driving force.\textsuperscript{44}

By this assertion Jellinek wanted to shift the credit for first declaration of human rights from the French Enlightenment to the Christian roots of America. Because the primary driving force behind the American Declaration of Independence was the Christian religious groups. The above mentioned groups struggled for religiously founded ideas of religious freedom, which according to Jellinek, are the source of other human rights. In the same vein Jellinek adds that, freedom of conscience and inalienable rights of individuals are based on religion rather than political ideology. For Jellinek, human rights cannot be based on law or civil rights, but only on religious grounds.\textsuperscript{45}

However scholars like Ernst Troeltsch, do not negate the influence of enlightenment for the codification of human rights. For him the


enlightenment thought had transformative effect on protestant Christianity. He states that:

“the entire history of western culture was characterized by interplay between Christian idea of love and conceptions of natural law.”

Max Weber, on the other hand, did not negate the role of religion in formation and institutionalization of human rights in their rationalistic forms. However, in other context, he mentions that human rights are tools of capitalism for its expansion. For Jack Donnelly the human rights are a set of social practices that emerged in response to changing socio-political and economic context of modern west. Although, the list of human rights are loosely connected to abstract philosophical reasoning, but they emerge from political struggle based on concrete human suffering. Human rights, for the past three centuries were ever expanding in terms of subjects and respective substance, moving closely towards full and equal inclusion of all the members of the humankind, the *Homo sapiens*. The arguments used by so called privileged classes, racists and bourgeois for their rights, were used by other marginalized group for their rights. Consequently, disposing the hierarchical world of rulers and

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subjects, and resulting in more egalitarian world of office holders and citizens.

Human rights are dynamic in nature that evolves consciously, based on changes in socio-economic and political structures, changing mode of oppression and ideas of human dignity. Modern Markets and Modern States are the two interrelated changes. The capitalistic markets and sovereign bureaucratic states pervaded Europe than the entire globe, as a result the traditional socio-economic and political structures were drastically changed or replaced. This resulted in new kind of problems and challenges to human dignity. The injustice and human sufferings created by modern markets and modern states were first experienced in West; therefore, the West took the initiative in the origin and development of human rights.49 Emerging working class of the west became a powerful political force to reckon. The political struggle of this newly recognized working class led to newer understanding of human dignity and its implications to life of dignity. Therefore, Jack Donnelly writes that:

“human rights, rather than a timeless system of essential moral principles, are a set of social practices that regulate relations between, and help to constitute, citizen and states in modern societies”.50

49 Ibid., p. 62.
50 Ibid., p. 61
The foundation for human rights is another widely debated topic in contemporary human rights discourse. Foundations, are the moral principles, philosophy, or belief systems on the given social practices, or code of conduct to ground itself. Therefore, foundations are something beneath the social conventions or reasoned choice. Advocates of human rights, and people who struggled for rights mostly appealed to the foundations of the human rights. Natural Law was appealed down through the centuries to ground the human rights. In the ‘Declaration of American Independence’ there is an appeal to the divinity, i.e., creator has endowed human beings with certain inalienable rights.

Conversely, Jeremy Bentham rejects human rights based on natural law. For him rights are from the government, and without government there is no question of rights. Bentham believes that, humans are self-seeking and egoistic, with a strong drive for the self preservation and self gratification. And there is need to curtail this drive for self gratification, for realization of the rights of all. And this curtailment can be achieved only by coercion which is the work of the governments. Therefore without the government and its policies there is no question of rights. Therefore Bentham rejects that idea of inalienable inherent human rights.  

Arthur Dyck conceptualizes human rights based on responsibilities towards community. He asserts that, contemporary human rights are based on individual rights and self-preservation. Arthur Dyck mentions that, the individualistic rights based on Hobbesian model, tear down the communities and severe the human bond and relationships. Instead, Arthur Dyck advocates that, human rights needs to be based on philosophy which fosters human relations and bonds, in this regard he writes:

“…that there are human relations or bonds that are logically and functionally necessary to make communities and individuals possible and to sustain them. These relations, brought about by certain of natural proclivities and inhibitions as human beings, identify basic moral responsibilities. These moral responsibilities are what actualize human rights, and they are what the ones demanded of human beings when rights are claimed.”

On the other hand, Tore Lindholm, attempts to ground human rights on the premise mentioned in the article one of ‘Universal Declaration of Human Rights’: ‘every human being is entitled to freedom and equal dignity’. Lindholm, further explicating this view writes:

“Article I of UDHR establishes that the proximate normative premise in justifying universal human rights is the moral principle that every human being is entitled to freedom and equal dignity, where “entitled” indicates what human beings are due as a question of

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52 Ibid., 10.
For Lindholm, freedom and equal dignity are universal axioms which ground ‘Universal Declaration of Human Rights’. He also makes room for cultural variations within the above mentioned broad based axiom. According to him the concept of freedom and equal dignity are un-explicated, and these can be interpreted in the light of cultural values and specific contexts within the frame work and provisions mentioned in the ‘Universal Declaration of Human Rights’.

However, Article one of ‘Universal Declaration of Human Rights’, does not provide an answer for the questions as to why and how such a normative commitment to freedom and equal dignity become a premise for the rest of the articles in the ‘Universal Declaration of Human Rights’.

In response to the question raised, Lindholm explains, the second sentence of the of article one ‘Universal Declaration of Human Rights’:

“…they should act toward one another in a spirit of brotherhood.”

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54 See Appendix, A, for full document of ‘Universal Declaration of Human Rights’
This phrase implies that, ‘reason and consciousness as foundation of certain duties. Moreover, another constrain which Lindholm thinks for universal consensus of the ‘Universal Declaration of Human Rights’ is the challenges and the context mentioned in the paragraphs of preamble to ‘Universal Declaration of Human Rights’. The context mentioned is the barbarous acts like war and genocide, which have outraged the conscious of humankind. The challenge will be the advent of a world where human beings will enjoy freedom of speech, belief, and freedom from fear and want.

According to Lindholm, the above mentioned context and challenges will bring the consensus and negotiated implementation program. In this context Lindholm writes:

“Compared to its classical western predecessors, the “official” United Nations foundation of the internationally acknowledged system of human rights is a more complex, more realistic, and more “open-ended” scheme of justification, at least if we accord pride of place to the Universal Declaration. This justificatory scheme relies on a commitment to inherent freedom and equal dignity for its proximate normative premises (leaving the deeper premises out of official doctrine) and on an interpretation of historically evolving global societal circumstances for its descriptive premises”.

55 Ibid., p. 397.
56 Ibid.
Conversely, Marxism maintains that, overarching vision of classless society which is impending through class struggles influences the concept of human rights. And the contemporary human rights are subordinate to this vision. As mentioned in preceding sections Marx criticizes contemporary human rights as bourgeois rights, which are used as a tool to safeguard property and control means of production leading to exploitation of the proletariats. Consequently, the revolutionary class struggle leads to classless society and total emancipation of the exploited classes. In this context, according to Marxism, human rights are just instruments leading to total emancipation as clearly explicated in Hermann Klenner in his book, ‘Marxism and Human Rights’. In the above mentioned book, Klenner writes:

“No Marxist conception of human rights that moves beyond purely negative points can be developed without the detailed proofs provided by Marx and Engels… of the epoch of world–historical transition from capitalism to communism.”\textsuperscript{57}

Therefore according to Klenner, human rights are historically conditioned, ideologically suspect, which need to be transcended.\textsuperscript{58} Conversely, Lindholm, contests the above mentioned Marxian view. According to Lindholm, vitiated Marxian conception of human rights views it as a policy and not a system of rights in the context of impending

\textsuperscript{57} Ibid., p.412.
\textsuperscript{58} Ibid.
communism. And the vision of ‘Total Emancipation’ is intellectually suspect and extremely controversial, and cannot be used to ground human rights. In this regard, Lindholm writes:

“historical calling of the modern proletariat …to lead humanity” must yield, within the relevant societal domain, to a morally and legally binding system of (genuine) human rights: heed of people human rights must never be outweighed by stratagems for the total new mode of production, appropriation and life.”59

As mentioned earlier the universality of international human rights corpus is questioned and debated on many factors. Some of the important factors are: varied cultural, philosophical and political models around the globe. In this section some of the debates are narrated. Eva Brems argues that, International Human rights corpus is universal because it has been formally accepted when ‘Universal Declaration of Human Rights’ was adopted by General Assembly of United Nations. However, this universality was questioned, when the eight member nations of United Nations abstained from voting.60 Nevertheless this objection was weakened when the ‘Vienna Declaration’ asserting the commitment to international human rights was accepted with consensus, at second United Nations World Conference.

59 Ibid.
60 Eva Brems, Human Rights : Universality and Diversity, p.6.
The existential roots of human rights are found to be common to all cultures, in this regard, Eva Brems mentions that, ‘United Nations Educational, Scientific and Cultural Organization’ sponsored many projects to find the value systems, cultures, religions and ideologies which are compatible and endorse universality of international corpus of human rights. Consequently, the researchers found out that:

“the concept of human rights itself, at the level of explicit theories, legal rules, or objectives ethnological description is not universal. Yet the existential roots of human rights, the fundamental requirement that a certain respect is due to human beings can be found across the world.”

The existential roots of human rights are focused by some to claim for universality of human rights, nonetheless some who look for human rights concepts *per se* in all cultures conclude that there is no such universality of human rights. Eva Brems cites functional acceptance of international corpus of human rights as another criterion for its universal application. Functional acceptance of human rights refers to the fact that, people of all cultures, ideological backgrounds, nationalities feel the need of security and privileges offered in international corpus of human rights. Across the world, people’s movements, trade unions, non-governmental

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organizations refer human rights for their claims. Therefore this can be termed as ‘existential universality of human rights.’

Along with Brems, Jack Donnelly, endorses ‘existential universality of human rights.’ According to Jack Donnelly, one of the reasons for universal application for international human rights aroused due to advent of global markets and modern states. Human dignity of the traditional communities was protected by customs, moral codes of the society by restricting the powers of the traditional rulers. The social support structure of the traditional community provided the safety and safeguarded interests of all the members of the community. But by the advent of modern state and markets, these traditional communities were destabilized in socio-economic and political arenas. Consequently human dignity and safety became vulnerable to violation. In this context, human rights become indispensable to address the violation, as traditional mechanism became inadequate to handle the situation created by modern markets and states.\(^{63}\)

**Cultural Relativism**

Cultural factors play an important role in shaping value systems of the society and provide moral reasons for action or inaction on certain issues. Therefore, study of cultural legitimacy of human rights is

significant because culture plays an important role in human rights violations as well as upholding the human rights. Cultural legitimacy of international human rights is essential because people should comprehend the human rights and its content as product of their own value systems and not imposed by external cultures or political regimes.\textsuperscript{64}

According to Ann-Belinda Pries, recent anthropology discarded culture as static, homogenous and conversely culture is considered as complex, variable, multi-vocal and contested.\textsuperscript{65} Culture is not stagnant and constantly changes by the various influences. Culture adapts to changing environment, cultural changes happen through internal discourse or through cross-cultural influences. Culture is viewed by scholars as contested, power struggles are waged to control and disseminate particular strand of culture. Henceforth, culture is built upon selective elements of past and present. Culture is also used to mask the repressive regimes and justify certain barbarous acts. This has been demonstrated with recent examples by Jack Donnelly, as he writes:

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“Relativist arguments became particularly perverse when they support a small elite that has arrogated to itself the “right” to speak for “its” culture or civilization, and then imposes its own self-interested views and practices on the broader society, invoking cultural relativism abroad while ruthlessly trampling on local
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\textsuperscript{64} Abdullahi A. An-Naim, ed. \textit{Human Rights in Cross-Cultural Perspectives: A Quest for Consensus}, p. 431.

\textsuperscript{65} Cited in Jack Donnelly, \textit{Universal Human Rights in Theory and Practice}, p. 86.
customs. Consider, for example Suharto and his cronies in Indonesia, who sought to cloak their version of modern state-based repression and crony capitalism in the aura of traditional culture. In Zaire, President Mobutu created the practice of ‘Salongo’ a form of communal labor with a supposedly traditional basis, which was in fact essentially a revival of the colonial practice of corvee labor.” 66

Cultural relativity implies that different cultures have varied concepts of value systems, moral codes, concept of human nature and dignity. And cultural relativism asserts that external value systems and moral principles cannot be legitimate human rights in alien culture. Chris Brown, promoting cultural relativism contends that, universal human rights cannot be transplanted to other alien societies which do not share the same moral values. Brown asserts that universal grounding of rights is a fiction.67 The universal rights will hold good only in the society of their origin and development. Chris Brown argues that it not possible to formulate general moral standards based on common denominator; because any attempt to devise the common denominator based on the existing social practices will be devoid of any content because cultures vary drastically. Neither general moral standard can be based on ‘reason’ for practical ‘reason’ gives different result in varied societies.

66 Ibid., p.103.
For Brown, human rights were successful in a liberal society because, these are most free and congenial societies in human history. Rights were honored and widely respected in these societies. Thus creating conducive atmosphere for right based politics. And it is impossible to extract rights and de-contextualize them to apply worldwide as a package. The contemporary sovereignty based global order allows varied moral values, creating a value-pluralism. But ‘Universal Declaration of Human Rights’ is based on one particular value system of liberal societies. And there is no compelling reason for others to accept moral values of liberal societies sideling their own concept of ‘Good’. Chris Brown supports the relativist argument and endorses that the cultural practices of the societies need to be judged by moral values shared by the society, and not by external, de-contextualized, general moral standards.

Like Chris Brown, Makau Mutua, endorses cultural relativist argument but on a different ground. According to Mutua, culture is not monolithic and all cultures are dynamic and internally discontinuous. Nevertheless, each culture has unique nature and is a product of accumulated wisdom of community.68 Therefore, according to Mutua, cultural legitimacy of human rights becomes indispensable. Though people of different cultures accepted the present human rights corpus,

nevertheless, they want to make a contribution at different levels, even radical reformulation. Therefore the present human rights corpus should be considered as experimental project and not a final draft. In this regard, Mutua quotes, Richard Schwartz:

“Every Culture will have its distinctive ways of formulating and supporting human rights. Every society can learn from other societies more effective ways to implement human rights. While honoring the diversity of cultures, we can also build toward common principles that all can support. As agreement is reached on the substance, we may begin to trust international law to provide a salutary and acceptable safeguard to ensure that all people can count on a minimum standard of human rights.”

Mutua agrees to the fact that, some basic human rights violations like genocide, slavery, in international human rights corpus are universal. Nonetheless, Mutua argues that, there is a need for rethinking on issues like typology of political society, and economic philosophy that international human rights corpus should endorse. Mutua alleges that, the present international human rights corpus is biased and controlled by western countries to spread liberal democracy and thus leading to political and cultural homogenization at the cost of cultural diversities, supplanting all other traditions. Therefore, the ‘Universal Declaration of Human Rights’ which is referred as “Common Standard of Achievement” for all peoples and nations” is considered as fallacy.

69 Ibid., p.4-5.
Mutua mentions that, the present form of human rights corpus will not find acceptance in non-western countries as it does not reflect the indigenous cultures of non-western societies, except for some elites with selfish interests. According to Mutua, non-western countries participated in drafting and adoption of ‘Universal Declaration of Human Rights’, nevertheless, the levers of power in the United Nations are with western countries, and numerical majority of third world countries in United Nations cannot wield the power to steer it and its declarations. According to Mutua, the equality of all nations big and small mentioned in the international human rights corpus is fiction, and subtly hides the unequal power relations. In this regard, Mutua writes:

“… the UN charter puts forward another pretense-that all nations “large and small” enjoy same equality. Even as it ratifies power imbalances between the Third World and the dominant American and European powers, the United Nations gave the latter the primary power to define and determine “world peace” and “stability.” This fiction of neutrality and universality, like so much else in the lopsided world, undergird the human rights corpus and belie its true identity and purposes. This international rhetoric of goodwill reveals just beneath the surface, intentions and reality that stand in great tensions and contradictions with it.”\(^{70}\)

In response to above mentioned cultural relativist approach, Jack Donnelly, takes a balanced view, he makes space for cultural factors, nevertheless, maintains universality of human rights. Explaining his approach, Jack Donnelly writes that, he opts for cross-cultural dialogue that integrates the non-western symbolism into the international human rights discourse, consequently creating stronger base for international human rights in non-western societies. However, Jack Donnelly presupposes that the above mentioned dialogue and incorporation is based on the accurate understanding of the international human rights.

Though, there are some variations over the interpretation and implementation of certain internationally recognized rights there is still some consensus overlapping. In this context, Jack Donnelly thinks that, culture is of no great problem for universality of human rights. However, Jack Donnelly makes it clear that, there is a universal consensus only at conceptual level or general statements of ‘Universal Declaration of Human Rights’ and not on interpretation and mode of implementation of the rights. Therefore cultural relativist’s objection to conceptual or abstract rights listed in ‘Universal Declaration of Human Rights’ tend to be in vain. Rights connected with basic dignity of a person include right to life, liberty, security, and equality before law. These rights are stated in general terms; and demand to be accepted by all cultures.

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However different cultures are free to interpret and implement the rights in their own context. By this arrangement, Jack Donnelly makes space for cultural factors to play a role within the broader framework of moral values presented in the ‘Universal Declaration of Human Rights’. For a given ‘right’ there may be modestly varied interpretation, in such context culture plays a role to select the interpretation, which is not arbitrary or motivated by self interest, but fulfills the demands of moral values presented in the ‘Universal Declaration of Human Rights’

Jack Donnelly maintains that, there are some cultural practices like slavery; extrajudicial execution, female infanticide, and trial by ordeal, that are condemned universally by all the external observers. These cultural practices need to be condemned even if the whole culture in question believes differently. In this regard Jack Donnelly asserts that:

“Negative external judgments may be problematic. In some cases, however, they are not merely permissible but demanded.”

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In line with Donnelly, Abdullahi, presents a balanced view to solve the tension of universality and cultural relativism. Abdullahi, argues that, there is no need to discard international human rights for reasons like culture, because these rights are a product of a struggle for many years. And once this is lost it may not be regained, because they provide a framework on human rights discourse. Nevertheless, they need not be

72 Ibid.
held in absolute terms, but need to be reviewed for cultural legitimacy.\textsuperscript{73} But on the cultural side, Abdullahi writes:

\begin{quote}
“On the cultural side, each of us must work from within his/her culture to bridge the gap, as much as possible, between the present international standards, on the one hand, and the norms and values of the culture, on the other….cultures are dynamic and changing, both internally and in response to external forces and influences. I believe that there are always alternative resources and positions within the culture that are closer to the present international standards than those perceived to be problematic from the point of view of those standards.”\textsuperscript{74}
\end{quote}

Member countries of ‘Association for Southeast Asian Nations,’ especially Singapore, China, Indonesia, Philippines, Thailand and Malaysia, supported international human rights corpus nominally, without asking much questions. Nonetheless, these countries started to critique the international human rights, questioning its relevance in Asian context; this is a relatively new phenomenon for varied reasons. Asian countries started to take international human rights seriously when they were used as criteria for trade relations, international aids and varied kinds of sanctions. These concerns were categorically expressed by Asian representatives in Vienna, General World United Nations Assembly.\textsuperscript{75}

\begin{footnotes}
\item[74] Ibid.
\end{footnotes}
Another reason for Asian assertion is its newly gained self confidence by the economic prosperity of some Asian states. ‘Association for Southeast Asian Nations,’ countries demand democratization of the United Nations system which is presently controlled by few nations. And these few nations dominate the international affairs using human rights as instrument of political pressure and domestic interference for self interests. Some countries like China and Singapore prefer to model their distinct economic and political societies, with authoritarian governments. For these nations the rights of social and economic development take priority over civil and political rights which are contradictory to indivisible characteristic of international human rights corpus.

Asian human rights critique also focuses on collective rights along with individual rights, sometimes collective rights take precedence over individual rights. This deviation from main stream of human rights movement is mainly due to the claim that Asian societies are more communitarian than individualistic. Another reason quoted, for undermining individual rights is to enhance disciplined governance for economic prosperity, which is beneficial to the entire society and not for just a few individuals. Henceforth, Asian nations demand the interpretation and implementation of international human rights in line with Asian socio-economic and cultural context. Though Asian critique of

human rights does not challenge universality of human rights, nonetheless they demand respect for diversity.\textsuperscript{77} Therefore, ‘Association for Southeast Asian Nations,’ countries demand evaluation, interpretation and implementation of international human rights based on local context of the nations.

In response to the above mentioned assertion of ‘Association for Southeast Asian Nations,’ countries, Eva Brems writes that, Asian critique of international human rights mainly emanates from government circles, therefore in Asian critique of human rights, it can be noted that economic policies, sovereignty of states, political model of societies are dominant issues rather than cultural values. However, cultural factor is used to promote government agenda in international forums.

\textsuperscript{77} \textit{Ibid.}, p. 88.