Chapter 1
**Epistemology of Human Rights**

The world order in the twenty-first century is on the threshold of globalization, economic interdependence, and information relevance on the one hand and universal concern for individual and collective human rights on the other hand.

The concept of human rights is as old as the ancient doctrine of natural rights founded on natural law, the expression human is of recent origin. It is only natural rights, which eventually led to the formation of human rights. Human rights are a dynamic concept and endeavors to adopt itself to the need of the day. Human rights constitute those very rights which one has precisely because of being human. They are not earned, bought or inherited nor does any contractual authority create them. Difference of sex, race, language and colour do not change these rights.

Human rights are essential for full development of human personality and for human happiness. They are indispensable for physical and mental upliftment of the human race. These rights are expression of what is a life minimally worth living, about primary necessities of life and thus about human rights. But still some rights must be regarded as fundamental like right to life with dignity, right to freedom of conscience and of course right to minimal means of subsistence. All human rights are basic rights in the fundamental sense that systematic violation of any human rights precludes realizing a life full of human dignity. Hence, human rights are based on mankind's increasingly demand for a decent and civilized life in which the inherent dignity of each human being will receive respect and protection.

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The Lexicon Universal Encyclopedia describes human right expression as follows:

"Human Rights are basic political and social conditions variously defined to which every individual is entitled as a human being. Originally they were called natural rights or the rights of man, and included the right to life, liberty and the pursuit of happiness cited in the US Declaration of Independence over the years the concept of human rights has been broadened to include rights to social benefits such as social security, rest, leisure and education." ²

There is no doubt that the term "Human Rights" is a 20th century pharaseological invention. The genesis of human rights is the utopian concept of natural rights traceable from the days of the Greeks. The doctrine of natural rights rests on a belief in Nature, as the original creating force, which gave to every man the power of finding reason the right principles on which to organize his life.

Nature has bestowed every human being with two related characteristics: one, he is an individual and second, he is a social being. Man cannot be his own natural self in solitude; he needs fellow human beings around him. So at one state or the other of the evolutionary process of human species, man started being in-groups. In all areas and eras, they must have, implicitly or explicitly, in legal terms or social terms, agreed on certain norms of social behavior, defined the rights and obligations of the individuals, particularly the nature of socially acceptable claims and the restrictions imposed by the need of maintaining social order.

The ancient Greeks made two basic distinctions that started the long tradition in the Western world about the human being as a person. They distinguished between men and the Gods on the one hand, and between men and beast on the

The main characteristic they saw that distinguishes man from the gods is the latter's immorality. On the distinction between men and animals they saw the presence of rationality in man and its absence in the beast as the decisive factor. With the latter distinction the Greeks simultaneously separated man from the brute and also established the basis for the theory of natural law, the oneness of the human race and the equality of all men based on the concept of justice, the human possession of reason and language.

Aristotle describes the nature of man as both "rational" and "political". The point Aristotle was making is twofold. First, he was pointing to the fact that man is the type of animal whose habitat is the state or polis, such that we can say it is the nature of man "to live, in a polis (state)". Man is "political" in that sense. Secondly, for man to be an inhabitant of a state, he has to be equipped by nature with the necessary instruments namely, "the power of speech" which is "different from voice" or more sound because it is the "capacity for rational communication".

On the other hand, Stoicism believed not only in the oneness of human nature but in oneness of nature in general. Stoicism held that man's rationality, capacity for speech and moral awareness equip him for life in a society that is truly human. This complex structure of relationship is summarized by Sabine in this manner: "Right reason is the law of nature, the standard everywhere of what is just and right, unchangeable in its principles, binding on all men whether ruler or subjects, the law of God." Hence, Natural Law was generally seen as "a fundamental law or law of nature, lying behind the civil law of every nation and binding, because of its intrinsic justice, upon all peoples and upon subjects and rulers alike."

During the medieval period the real foundation of human rights was laid. This was due to the religious intolerance and the political economic bondage began

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4 Ibid., p 442.
during this period. With the introduction of Magna Carta (1215), Petition of Rights (1628) and the English Bill of Rights (1689), the eternal and inalienable rights started gaining the popularity.

Hence, the genesis of the concept of human rights can be traced into the emergence of classical liberals. Classical liberalism made a passionate defense of the principles like competitive individualism, private property and market ethics, etc. It cherished the realization of individual's liberty, his development and human progress through the functioning of the above principles. The idea of the rule of law, limited government and individualism characterized the seventeenth and eighteenth century anti-nationalist school of political liberalism.

The modernist conception of natural rights took real shape during the 17th century and 18th century. The scientific and intellectual achievements of the 17th century- the discoveries of Galileo and Newton, the materialism of Hobbes, the empiricism of Bacon and John Locke - encouraged a belief in natural law and universal order.

Frankly admitting, there was no concept of the right of a person to be called as human rights in the state of nature for the reason that human beings could not satisfy their basic needs and interests without the cooperation of others. Each man was a wolf to every other man and in an atmosphere of hate, fear and mutual distrust, everybody was war with everybody else: Hobbes opines that there existed no right or wrong in the moral or legal sense in the state of nature. He argues that it was necessary for men, to enter into a concept mutually among, themselves by which everyone agreed to transfer all his powers upon one man, or upon an assembly of men. Hobbes was conceived that the sovereign, in order to

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perform its function adequately and safeguard the human rights was required to be omnipotent.\(^{10}\)

John Locke, one of the modern liberalism argued in detail, that certain rights like right to life, liberty and property self-evidently pertain to individuals as human beings because they even existed in the "state of nature" before humankind entered into civil society. He further argued that while entering into civil society through contract humankind surrendered to the state only the right to enforce these natural rights and not the rights themselves. He also cautioned that if the state fails to protect these rights people also have a right to revolt against state.\(^{11}\) The liberal philosophers though belonged to varied current of thoughts had a common supreme faith in reason and vigorously attacked religious and scientific dogmatism, censorship and socio-economic restraints. Despite the apparent universalism of natural rights, liberties and right to estate etc, his philosophy provided justification for these rights and freedom only for upper class males, women, wage-labourers, menial workers of either sex and non- Europeans were not entitled to be right holders.

The teachings of these liberal thinkers had a profound influence on the Western world of the late 18\(^{th}\) and the early 19\(^{th}\) century. This can be seen in the American Declaration of Independence (1776) which stated: "We hold these truths 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 the Pursuit of Happiness". Similarly the French Declaration of the Rights of man (1978) emphasized that "men are born and remain free and equal in rights", which are "Liberty, Property, Safety and Resistance to Oppression".\(^{12}\)


Despite practical success in France and England the idea of human rights as natural rights was not without its detractors. The doctrine of natural rights with the passage of time became less and less acceptable to philosophical and political liberals due to its frequent association with religious orthodoxy and its abstract nature. The most serious philosophical blow to natural rights theory came from Edmund Burke, David Hume and Jeremy Bentham they held the view we can never know the nature of man, and thus we can never identify human rights. For if human nature is impossible to identify or if no such idea as the nature of something can be meaningful so that human nature does not exist such that we could know it – then the rights that people have because they are human beings, that is, by virtue of the humanity, human nature can not be identified. They further condemned the doctrine out of fear that public affirmation of natural rights would lead to upheaval. Despite belief in natural law they expressed doubts that the rights of man could be derived from it. They criticized the Declaration of Rights of Man as “Monstrous Fiction” of human equality.

Bentham one of the founders of utilitarianism was more critical. He asserted that “right is the child of law, from real law come real rights but from imaginary laws, come imaginary rights”\(^\text{13}\). He goes on to the extent of calling it (natural rights) as “simply nonsense, natural and imprescriptible rights, rhetorical nonsense, upon stilts”\(^\text{14}\). This assault upon natural law and natural rights for the intensified and broadens during 19\(^{th}\) and early 20\(^{th}\) century by J.S. Mill and John Austin.

Immunual Kant, J.G.Merills, and Roscoe Pound strongly maintain that legal orders recognizing and protecting rights, and human rights in particular, are rather historical and social phenomena the struggle for which has been as old as human history itself for the reason that it concerns and needs to protects the individuals


against the abuse of power by the tyrant. They emphasise that human rights are rights of individuals and ought to protect individuals, against other individuals and the State. In real life he finds himself constantly at odds with other individuals and the State. There are many unwanted separations and conflicts between individuals in their relations to one another and to the State. In these circumstances human rights imply protection of individuals against each other and against State as well. Thus, human rights are not superfluous at all.\(^{15}\)

Human rights are not merely ideals or aspirations, nor are they some rights granted to us by the existence of particular set of law. They are claims made by virtue of the fact that we are human beings with an inalienable right to human rights. Therefore we can not delegate the authority to a person to define these rights all individuals and all peoples have these rights to self-directed development.

M.H. Beg the former Chief Justice of India has defined human rights as follows:

"Human rights imply justice, equality and freedom from arbitrary and discriminatory treatment. These cannot be subordinated to the interest of the rulers.

No one can be subjected to coercion for holding particular religion beliefs. The doctrine of national sovereignty cannot justify violation of human rights".\(^{16}\)

Justice V.R. Krishna Iyer has described\(^ {17}\) "Human Rights and Fundamental Freedom are indivisible, full realization of civil and political rights and cultural rights, is impossible. This process of realization calls for legal postivisation, not political polemics nor diplomatic claptrap but normative formulation. But what are human rights? Religion of man is located in the Vedas, Buddhist Texts, Bible, The Quarn or the holy literature or other authentic teachers to uphold human dignity. Every human being is a divine being and has a little to dignity, liberty,
equality and other basic rights. We cannot understand or evaluate human rights divorced from the historical and social context. Idle ideals and empty assertions cut no ice. The status of human rights taken us to the lifestyle of a society, that is why the Indian constitutional approaches is soaked in the social milieu and human conditions. India is plural society and the concept of the human rights in such society has a different and a unique position.

The concept of human rights has gradually evolved over the past several centuries. It is immaterial whether one calls these rights as inherent rights, fundamental rights or by some other name. These rights by themselves have no fixed content as has been rightly remarked by Justice Mathew and most of them are empty vessels into which each generation has poured its content in the light of its experience. Human rights have been conceived in the last few decades of the twentieth century, are justifiable claims, on behalf of all men to corporate actions. They are owed to the individuals by the state as well as by the organised social and economic groups, which are the center of power and authority. The concept of human rights has a dynamic nature in reference to time and space.

The question, arises that are the Human Rights are universal in its nature and is legal recognition and enforcement of human rights effective against social injustice and to answer these questions there are four different view points.

The first point of view as explained by Hundrick Kaptein in his work is that concept of human rights presupposes that the state has a duty to advance to protect these basic rights. Human rights also do with relationships of citizens among themselves human rights are more absolute than rights in general. This leads to a fundamental point of view concerning human rights.

The second is the normative-ethical point of view, which stress that human rights are based upon ethical necessity of life worth for everyone. Equality is the

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18 See R. M. Dworkin, "Talking Rights Seriously" (1976), p. 91
basis of human rights and must be given in any conception of normative ethics.\textsuperscript{20} Normative ethics must at least provide a principle of equality concerning the conduct of human beings to each other. All normative ethics pre-suppose the recognition of person quo human beings. Such a minimal ethics already is recognition\textsuperscript{21} of Human Rights.

The third is the legal point of view, which concerns legal recognition, and protection of human rights asserts that these arts are given a legal coverage by the state under constitution and fundamental laws. Moreover, human rights that are recognized by international treaties and conventions, criminal law are also legal protection of the fundamental arts to life, physical integrity and property. Administration law ensures possibility for citizens to receive redress when theirs human right are infringed upon by the state. It should be noted that human rights not only define relationship between citizen and the State, but also determine right duties and obligations of citizens themselves.

The fourth point of view relates to the factual, empirical anthropological, sociological, and historical point of view. It reflects on the historical geographical and cultural background of human rights, it is the duty of the state, regardless of their political, economic and cultural backgrounds of human rights, to promote and protect all human rights and fundamental freedom.

The human rights are the sign and symbol of human development and peace. The certain features of human rights are:

1. These rights are inalienable.
2. It is a permanent universal and legal concept in all sphere of life
3. They are minimum requirements for survival of mankind or human beings.
4. They are protected and enforced by the authority of Society State at all levels.

\textsuperscript{20} \textit{Ibid.}, p. 35.
What are the main contentions of the twentieth century human rights theory? 22

Briefly stated, they are among others; first, the validity of human rights is established by specific legislation. The inherent dignity of human rights is not sufficient. Thus the whole concept has acquired a judicial character; second, within the bourgeoisie legal system the human right issue received an extended treatment by two branches of law, that is constitutional and international law; third, the human rights are vested in all individuals, not in professional groups, social groups, communities, tribes, races, classes, castes, nations or other entities. Furthermore, a human being enjoys his or her human rights both as an individual and a citizen, fourth, the human rights concept remains immutably valid wherever human beings lead a collective life.

Marx and Engles stated: the recognition of the rights of man by the modern state has no other meaning than the recognition of slavery by the ancient state had slavery as its natural basis, the modern state has as its natural basis, civil society and the that is the individual man linked with other men only by the ties of private interest and unconscious natural necessity, the slave of labour for gain and of his own as well as other men's selfish needs. 23 It follows that the very notion of human rights, according to Marx and Engles is linked to the competitive struggle that is the hallmark of the bourgeois society and is based on vision of society and the individuals as inheriting separate and antagonistic units.

Human rights are thus viewed as instruments for carrying out adversary relations between competing primary atomistic individuals. Central to Marxism in its concerns for human beings and the idea that man, stripped of 'his human essence' when he first fell into the class of the exploited, confronts the destruction of all humanity in him in a bourgeois society. The process of bourgeois exploitation, with its naturally corollary 'greed and the war between the greedy

competition 'holds the entire society at the mercy of the market forces. It 'estranges man from nature from himself, his own active functioning... from his universal, essence... it makes his essence into a mere means for his existence... it estranges... his spiritual, his human essence... it results in the alienation of man from man'.

Such kind of alienating, depersonalizing and dehumanizing impact of bourgeois system makes the whole context that Marx stated about communism that it is the actual phase necessary for the next stage of historical development in the process of human emancipation and recovery. Thus in a communist society, Marx argued in the critique of the Gotha program working class would enjoy the right to compensation for labour.

In the early socialist stage the working class would contribute a quantity of labour and in return, would acquire a right to receive back a share of the social product exactly in the proportion to its contribution in the production process. However, in the later phase of communism when subordination to the division of labour would be ended 'only then come the narrow horizon of bourgeois right be crossed in its entirety and society inscribes on its banner's from each according to his needs

The human rights signify both rights and duties, which are inter-linked. The term "Human Rights" means being argued as vital for a democratic society, but also an economic, social and cultural rights as well as the rights are essential component of sustainable development and therefore not possible without respect of human rights. Respect for human rights makes freedom more meaningful. They cannot be enjoyed in an environment of poverty and deprivation. Human rights necessarily signify human values in an absolute sense: but they have greater relevance to the well being of the individual if they are applied in the context of society.

The human rights are sign and symbol of human development and peace. The

whole fabric of society depends upon human rights. Without human rights the society cannot run smoothly, and there could be many chances of crime and disturbances in the society. The protection of human rights is a constant struggle, which cannot be won unless every man and women participate in it. In real practice the human rights is the sum of all rights necessary to ensure to be human and it is the duty of all peoples and government to create the condition headed to exercise our right to be human.

Everyone is born with human rights regardless of who he is and to which community he belongs, and wears different culture. These rights are essential for the full development of the human personality and for human happiness, everyone has a right to be protected by the state and the people. Human rights are inherent in and integral to every human being, basic for human life and its development, and incorporated in the constitutions of every state. They are owned to the individuals by the state as well as by the organized social and economic groups, which are the center of power and authority. The concept of human rights has a dynamic nature in reference to time and space. They allow human beings to fully develop and use their human quality, intelligence and talents and conscience and also to satisfy the spiritual and other needs. They recognize the inherent dignity and fundamental freedoms of all members of human family and are the foundation for all-basic freedoms, justice and peace in the world.

After the First World War, the world community for the first time realized the need to establish some institutional mechanism to protect and preserve the rights of man. The establishment of the League of Nations was the first attempt in this direction. However it should be born in mind that human rights did not find any direct and explicit reference in the Covenant of the League of Nations. The League Covenant made an indirect reference to the welfare of the people governed under the mandate, Art 22(5) made responsible to the mandatory state to

26 See Upendra Bavi, "Rights to be Human", New Delhi, Lancer International, 1987 p.44.
maintain such conditions in the territory which will guarantee “freedom of conscience and religion” and “the prohibition of abuses such as slave trade” etc. However, the vague and halting hunger for peace, human rights and social justice expressed in the Covenant of League of Nations was transformed into firmer commitments and stronger imperatives in the Charter of the United Nations, which stressed the urgency of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms.

Infact the horrors and worst kind of brutalization of human rights in the second world war was the main motivating factor in pursuing the goals of protection of human rights in the post-war period. The general approach, which is adopted in order to protect human rights, is to give them the legal status, by incorporating them into some international charter or national constitution, thereby making them justiciable. Moreover, the most fundamental, aspect of the human rights issue, which gives both the legal and the moral claim, is the human element. A legitimate claim to certain rights is based on the concept of the human being as a “person”. Only person has rights, right meaning a certain quality or property of relationship between persons, such that one demands certain things and insists that he or she must have them as a matter of legitimacy. Hence, a great deal of effort is being made to assign legal grounds to sanctions in case of their infringement. Both as a morality and as a part of legal order, human rights are indispensable in the struggle against injustice and sufferings in the world. A plausible morality of community implies much more than recognition and enforcement of human rights.

The United Nations, which arose like a phoenix out of the ashes of Second World War, put the utmost stress on promotion and fastening of human rights and basic freedom. The United Charter was the first international instrument which

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30 The Charter signed on 26 June 1945 and entered into force on 24 October 1945. For the full text see Brownlie, I., Basic Documents on International Law.
in unequivocal terms proclaimed "Universal respect for, and observance of human rights and fundamental freedom for all without distinction as to race, sex, language or religion". The United Nations Charter has provided a constitutional basis on which the United Nations can bring about changes in the status of the individual vis-à-vis his own state. The United Nations has been deeply involved in the furtherance of the cause of human rights ever since its inception in December 1948, after three years of preparatory work, the United Nations general assembly proclaimed the declaration to be "a common standard of achievement for all people and all nations". Adoption of Declaration was really an event of great significance, which launched a new era of hopes and aspirations for human civilization in the protection and promotion of human rights across the globe.

Mrs. Eleanor Roosevelt rightly called it the "Magna Carta" of all mankind, as it constitutes a landmark in the history of human rights. She further stated that its proclamation of the rights of man in the Declaration of the United States of America and similar Declarations should be made in other countries. It called upon member-states and all peoples to promote and secure the effective recognition and observance of rights and freedom set forth in the declaration.

India has taken an active part in the drafting of the Universal Declaration on human rights. Dr. Hansa Mehta, a Gandhian social worker, who had led the Indian delegation, had made important contributions in the drafting of the Declaration, especially by highlighting the need for reflecting gender equality. India is a signatory to the six core human rights covenants and is fully committed to the rights proclaimed in the Universal Declaration. A number of activities were organized in the country during 1998 to commemorate the 50th Anniversary of the Universal Declaration. India has advocated a holistic and integrated approach that gives equal emphasis to all human rights, based on their inter-independence, inter-relatedness, indivisibility and universality, and reinforces the inter-relationship

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between democracy, development, human rights and international cooperation for development.

Classification of human rights: -

**Moral Right**

They are also called natural rights and they belong to people simply because they are human. They do not have to be earned, bought or inherited. People are equally entitled to them regardless of their sex, race, color, language, national origin, age, class, religious or political beliefs.

**Legal Right**

These are rights that are laid down in law and can be defended in a country’s court of law. Most, but not all-legal rights are written down. Large numbers of people in a country does not regard sometimes-legal rights as moral. This happens for example when the law allows some people to discriminate against others because of their sex, race, color, language or religion. These rights are based on general principles of fairness and justice. They are often, though not always, based on religious beliefs. A moral right may or may not be a legal right. A moral right, which is not a legal right sometimes, cannot be defended in a court of law.

**Civil and Political Right (or liberty-oriented rights)**

These include:

- Right to live, freedom and safety.
- Right to rule of law i.e. (equality before the law).
- Right to freedom of expression and communication.
- Right to be considered innocent until proven guilty.
- Right to freedom from torture and cruel and degrading punishment.
- Right to freedom from interference in your home.
- Right to freedom of association and assembly.
- Right of people to form their government.
- Right to leave your country and return.

Social Economic and Cultural Right (security-oriented)

These include:

- Right to employment
- Right to equal pay for equal work.
- Right to work and choose your kind of work.
- Right to earn enough pay to support your family.
- Right to a decent home, good food and shelter.
- Right to adequate health care.
- Right to own property and not be deprived of it without good reason.
- Right to an education without fees.
- Right to choose how and what your children will be taught.
- Right to form and join a trade union.
- Right to be protected in illness and in your old age.

Environmental and Development Rights.

These include:

- Right to a clean and healthy environment.
- Right to a safe environment.
- Right to freedom from pollution or other activities which harm the environment.
- Right to live in a country which is able to develop its economy without interference from other countries.
- Right to enjoy the cultural and recreational life of one's community.

Some Overlapping Rights.

These include:

- Though often listed as a political right, freedom from discrimination frequently involves social and economic affairs as well. Freedom of religion and freedom of association are seen by some as political rights but by others as social rights.
• Though usually classified as a social or economic right, the right to join and
form a trade union might be seen as a political right because the unions have
been so active in politics.

U.N. Charter today imposes a duty to respect the human rights of their
nations\(^{13}\). The Preamble states: “We the people of United Nation... not merely
the Member states... reaffirm their “faith in fundamental human rights and in the
dignity and worth of the human persons, in the equal rights of men and women of
nations large and small...” Art. 1(3) includes among stated purposes, the
achievement of “International Cooperation in solving international problems ...
And in promoting and encouraging respect for human rights and for fundamental
freedom for all without distinction as to race, sex, language, or religion...” The
General Assembly shall initiate studies and make recommendations for the
purpose of “assisting in the realization of human rights and fundamental freedoms
for all”\(^{14}\). The important provisions are probably those contained in Art 55 and 56
of the Charter. Art 55 provides that U.N shall promote inter-alia, “Universal
respect for all and observance of human rights and fundamental freedom for all
without distinction as to race, sex, language, religion, ‘while in Art 56’ all
members pledge themselves to take joint and separate action in cooperation with
the organization for the achievement of purpose set forth in Art 55”. Art 62(2)
authorizes Economic and Social Council to “make recommendations for the
purpose of promoting respect for observance of human rights and fundamental
freedom for all.”\(^{15}\) Further, it is provided that, the Economic and Social Council
shall set up commissions for the “Protection of Human Rights”\(^{16}\). Provision are
also made under Art 76(c) as the basic objective of the trusteeship system, “to
encourage respect for all distinction as to race, sex, religion, language.”\(^{17}\)

\(^{13}\) See, Quincy Write, “National Courts and Human rights”. *Journal Of International Law* (1951).
\(^{14}\) See, Charter of UN, Article 13-(1) (b).
\(^{15}\) Ibid. Article 62.
\(^{16}\) Ibid. Article 68.
\(^{17}\) The *UN Charter* refers generally to fundamental Human Rights in Articles 1(3), 55(c), 62(1), 68
and 76(c).
A careful reading of the Preamble to the Universal Declaration of Human rights will show that the Preamble contains the ideals and aspirations of the world community to promote and establish human rights to all. It declares the highest aspirations of the common man- his rights and freedoms which he desires to secure for him for others- for all in the world. The UN Charter imposes a duty to respect the human rights of their nations.

The UDHR (adopted and proclaimed by General Assembly resolution 217 A (III) of 10th December 1948) states the basic hopes and wishes that are common to all humanity. The UDHR records the wishes not only of people from countries which had already reached a certain economic standard of living, but it also set out the rights of people in countries where hundreds of millions of human beings were weighed down by oppression, poverty and lack of adequate education. The UDHR is not a treaty, a legal agreement between countries, and binding legal document. It is rather a declaration, a statement of intent or principle. In the 30 articles the Universal Declaration of human rights sets forth the basic rights and freedom to which all men and women are entitled, without any discrimination. They include: -

ARTICLE 1. Right to equality
All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

ARTICLE 2. Freedom from discrimination
Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, and trust, non-self-governing or under any other limitation of sovereignty.
ARTICLE 3. Right to life, liberty, personal security
Everyone has the right to life, liberty and security of person.

ARTICLE 4. Freedom from slavery
No one shall be held in slavery or servitude; slavery and slave trade shall be prohibited in all their forms.

ARTICLE 5. Freedom from torture, degrading treatment
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

ARTICLE 6. Right to recognition as a person before the law
Everyone has the right to recognition everywhere as a person before the law.

ARTICLE 7. Right to equality before the law
All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement of such discrimination.

ARTICLE 8. Right to remedy by a competent tribunal
Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

ARTICLE 9. Freedom from arbitrary arrest, imprisonment, exile
No one shall be subjected to arbitrary arrest, detention or exile.

ARTICLE 10. Right to fair public hearing
Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

ARTICLE 11. Right to be considered innocent until proven guilty
1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
2. No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**ARTICLE 12. Freedom from interference with privacy, family, home or correspondence**

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**ARTICLE 13. Right to free movement in and out of any country**

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

**ARTICLE 14. Right to asylum in other countries from persecution**

1. Everyone has the right to seek and to enjoy in other country asylum from persecution.

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**ARTICLE 15. Right to nationality and freedom to change it**

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**ARTICLE 16. Right to marriage and family**

1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

ARTICLE 17. Right to own property

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

ARTICLE 18. Freedom of belief and religion

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

ARTICLE 19. Freedom of opinion and information

Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

ARTICLE 20. Right to peaceful assembly and association

1. Everyone has the right to freedom of peaceful assembly and association.

2. No one may be compelled to belong to an association.

ARTICLE 21. Right to participate in government and in free elections

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government, this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.
ARTICLE 22. Right to social security
Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and inter-national cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

ARTICLE 23. Right to desirable work and to join a trade union
1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

ARTICLE 24. Right to rest and leisure
Everyone has the right to rest and leisure including reasonable limitation of working hours and periodic holidays with pay.

ARTICLE 25. Right to adequate living standards
1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
ARTICLE 26. Right to education

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening to respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

ARTICLE 27. Right to participate in the cultural life of a community.

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific literary or artistic production of which he is the author.

ARTICLE 28. Right to social orders assuring to human rights

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

ARTICLE 29. Community duties essential to free and full development

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the
just requirements of morality, public order and the general welfare in a democratic society.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

ARTICLE 30. Freedom from State or personal interference in the above rights

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

However, United Nations and human rights was devoid of any legal sanctions to compel states to meet the obligations of ensuring observance and implementing of human rights enriched in it. So to transform the principles into provision casting binding legal obligations on the part of ratifying state, the general assembly promulgated in December 1966 international covenant or civil and political rights, and optional protocol to the covenant or civil and political rights.

The concept of human rights has been a variable and dynamic one. It has in fact varied from generation to generation and evolved with the changing times and under the constantly shifting conditions. Human rights ought to be for all men and women, general and universal and not linked to any special positions.

In this growing body of human rights the International Covenant on Civil and Political Rights is easily the first milestone. They constitute the first generation of rights then added Economic, Social and Cultural Rights, passed by the United Nations general assembly in 1966. These were the second generation of human rights.

Unlike the first generation of human rights, which are prohibitive to the states, the second generation if, human rights empower the state towards achieving the basic social economic rights of its citizens. The first generation of

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30 See Prof. N. Saruwaoba "Human Rights in the New Millennium", 2001, p.72
human rights would not remain safe without making grounds for a healthy, viable, equitous and a just set of second generation of human rights.


The status of the fourth generation of human rights like right to environment, right to common heritage of mankind among others, as endorsed by the respective bodies of United Nations in the new world order, is found to be the utmost important to the third world countries. It has not been fully crystallized and it has to be adequately developed in the 21st century.

The International Bill of Human Rights served as the inspiration for more than 150 conventions on human rights instruments that have been concluded within the United Nations a wide range of issues. Some of them are:

1. Convention on the Prevention and Punishment of the Crime of Genocide (1948) - It is a crime under international law. Those guilty of genocide, in wartime or peace can be tried in the countries where the crime was committed.

2. Convention relating to the status of Refugee (1951) defines the right and make provision for various aspects of their right to work, education, public assistance and so on.

3. Convention on the Elimination of all forms of Racial Discrimination (1965) is one of the most widely ratified treaties, with 143 state parties as of June 1995. It finds any policy of racial superiority based on racial difference, unjustifiable, scientifically false and morally and legally condemnable.

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4. **Convention on the Elimination of all forms of Discrimination against Women (1979)** – State parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same right shall accord to women equality with men before law and shall take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.

5. **Convention against Torture and other Inhumane or Degrading Treatment (1984)** – Torture is one of the most alarming human rights abuses. It is used as punishment, to obtain information or force confessions, but even more so to spread fear and induce shock and passivity in individuals and in entire communities. It is as an international crime and holds state parties accountable for preventing and punishing torture.

6. **Convention on the Rights of the Child (1989)** – It recognizes the particular vulnerability of children and brings together in one comprehensive code benefits and protections for children who are refugees, disabled or members of minorities.

7. **Declaration on the Rights of persons belonging to National or Ethnic, Religious and Linguistic Minorities (1992)** – It proclaims the rights of minorities to enjoy their own culture; to profess and practice their own religion; to establish and maintain contacts with other members of their groups.

Hence, in the language of United Nations Charter of Human Rights- “human rights could be generally defined and those rights which are inherent in our nature and without live as human beings”. It was a yardstick of international standards and a path finding instrument. It defines specific rights- cultural, political as well as social economic and cultural with equality and freedom discrimination as a principal. The United Nation Charter reflects a new approach to the protection of
human liberty and freedom, both of experience of World War II and the years immediately preceding it, when the flagrance violations of human rights and denial of basic dignity of man were the hallmarks of regimes challenging and violating international peace and society. The 20th anniversary of the adoption of the Universal Declaration of Human Rights was commemorated in 1968 as the International Year for Human Rights. The major event of the year the International Conference on Human Rights. The major event of the year the International Conference on Human Right held in Teheran (Iran) was the first worldwide governmental reviewed progress made since the adoption of the universal declaration evaluated the effectiveness of the human rights activities and adoption a program of action and a proclamation. The conference called for measures to ensure the better protection of civilians, prisoners and combatants in all armed conflicts. The world conference on human rights (Vienna 14-25 June 1993) was the first global review of human rights since the international conference on human rights in Teheran in 1968. The conference demonstrated a growing determination among member states and human rights NGO’S and other activities that the existing body of law be backed up by vigorous operational activities undertaken by the United Nations to ensure that these laws be carried out by the government human rights-in the words of Vienna Declaration adopted at the world conference had become the legitimate concern of the international community. It proclaims that “democracy, development and respect for human rights and independent and mutually reinforcing” Secreta...
1. Supposing the establishment of a special Rapport’s on violence against women.
2. Calling for the universal ratification by 1995 of the convention of the rights of the child.
3. Recommending that the general assembly proclaim an international decade for the world’s indigenous people and a decade for human rights education.

The fiftieth session of the United Nations commission of human rights place between January 31 and March 11, 1994 adopted 109 resolutions and took other actions addressing human rights violations in thirty countries. The resolutions condemned violence and rights violations directed against women. The commission also sought to implement the Vienna conference’s call for the identifications of gender-specific abuses as human rights and the integration of women’s human rights throughout the United Nations.

The conference’s achievement include:
1. Recommending the establishment of a High Commissioner for Human Rights.
2. Reinforcement of universality of human rights.
3. Recognition for the first time, by consensus, that the right to development is an inalienable right.
4. Recognition of democracy as a human right, thus opening the way to the strengthening and promotion of democracy, democratization and the rule of law.
5. Recognition that the acts, methods and practices of terrorism aim at the destruction of human rights.
6. Reinforcement of policies and programs to eliminate racism and racial discrimination, xenophobia and intolerance.

Addressing the World Conference on Human Rights at the Vienna on 14th June, 1993, His Excellency Boutros Boutros Ghali expressed his views in the


Ibid., p.810
importance of human rights as follows. "One thing is certain—there can be no sustainable development without promoting democracy and, thus, without respect for human rights. Only by heightening the International Community’s awareness of human rights in this way and involving everyone in this effort can we present future violations that our conscience, and the law, will condemn". He stated ‘May human rights create a special climate of solidarity and responsibility. May Human Rights become the common language of humanity.’

**Epistemology of Human rights in India.**

Before going to the epistemology of human rights in India, let’s look into the historical retrospection of human rights. See Table I.

<table>
<thead>
<tr>
<th>SL. No.</th>
<th>Literature/Movement</th>
<th>Proponent/Exponent</th>
<th>Country</th>
<th>Period</th>
<th>Postulates</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The Vedas</td>
<td>Apaurasheya</td>
<td>India</td>
<td>1500-1000 BC (Approx.)</td>
<td>Dharma, knowledge about medicines, duties of kings and the subject people, Rig-Veda, Yajur-Veda, Sama-Veda and Artharva- Veda</td>
</tr>
<tr>
<td>2.</td>
<td>The Ramayana</td>
<td>Valmiki</td>
<td>India</td>
<td>1500 BC (Approx.)</td>
<td>Exemplary role of righteousness, human personality, love, peace, non-violence, freedom from wants, morality, etc</td>
</tr>
<tr>
<td>3.</td>
<td>The Mahabharatha</td>
<td>Ved Vyas</td>
<td>India</td>
<td>1000 BC (Approx.)</td>
<td>Code of life, philosophy of social and ethical relations, human problems</td>
</tr>
<tr>
<td>4.</td>
<td>Bhagavad Gita</td>
<td>Lord Krishna Gospel</td>
<td>India</td>
<td>700 BC (Approx.)</td>
<td>Teachings of Lord Krishna to Arjuna, valour, humane feeling, etc.</td>
</tr>
<tr>
<td>5.</td>
<td>Jainism</td>
<td>Vardhman Mahvir</td>
<td>India</td>
<td>599 BC</td>
<td>Mahavira was the last Tirthankarof the sect</td>
</tr>
</tbody>
</table>

14 Extract from: the opening address of His Excellency Boutros Boutros-Ghali; UN Secretary- General at the World Conference on Human Rights. 14th June 1993 (Published in “Human Rights The New Consensus”) - Regency Press (Humanity Ltd.) 1994 London.
15 Supra Note-43.

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<table>
<thead>
<tr>
<th></th>
<th>Religion</th>
<th>Philosopher</th>
<th>Country</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Buddhism</td>
<td>Gautam Buddha</td>
<td>India</td>
<td>550 BC</td>
</tr>
<tr>
<td>7</td>
<td>Philosophy of Natural Law</td>
<td>Heraclitus</td>
<td>Greece</td>
<td>530 BC</td>
</tr>
<tr>
<td>8</td>
<td>Philosophy</td>
<td>Socrates</td>
<td>Greece</td>
<td>470 BC</td>
</tr>
<tr>
<td>9</td>
<td>Philosophy</td>
<td>Plato</td>
<td>Greece</td>
<td>427 BC</td>
</tr>
<tr>
<td>10</td>
<td>Philosophy</td>
<td>Aristotle</td>
<td>Greece</td>
<td>384 BC</td>
</tr>
<tr>
<td>11</td>
<td>Arthashastra</td>
<td>Kautilya or Chanakya</td>
<td>India</td>
<td>326 BC</td>
</tr>
<tr>
<td>12</td>
<td>Legal Philosophy</td>
<td>Marcus Tullius Cicero</td>
<td>Greece</td>
<td>104 BC 43 BC</td>
</tr>
<tr>
<td>13</td>
<td>Roman Law</td>
<td>Gaius Ulpian Paladius etc.</td>
<td>Greece</td>
<td>1st Century</td>
</tr>
</tbody>
</table>

Jainism. His teaching are the paths of non-violence and monotheism. He was against the sacrifices and wastage of money on rituals.

Preached the path of non-Violence, against statue Worship, advocated simplicity, Eight-fold path of morality.

Founder of the philosophy of Natural Law. He paved the way for thinking upon ethical or political side of the speculation.

A great thinker and enquirer of truth, why and how of things, moral values. He emphasized in practical morality based on scientific outlook. According to him ‘Virtue’ is ‘Knowledge’ and ‘Whatever is not knowledge’. Man’s is sin, goodness-badness, moral rules etc.

Enunciated the doctrine- “Justice is harmony of man’s Inner life and harmony is the quality of justice and it is achieved by reason and wisdom over desires”.

The purpose of State, Community, Law is to enable man to realize good life i.e. living according to virtue.

He based the principles of law and government, duties of King towards his subjects rather than of his divine prerogatives.

True law is right reason in agreement with nature, it is of universal application, unchanging and everlasting.

Jus Naturale-the law of nature fixed immutable, higher to all

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<table>
<thead>
<tr>
<th>No.</th>
<th>Event</th>
<th>Author(s)</th>
<th>Country</th>
<th>Date</th>
<th>Human Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>14</td>
<td>New Testament (The Holy Bible)</td>
<td>Lord Jesus Christ, St. Mathew, St. Luke, etc.</td>
<td>Israel</td>
<td>1 AD</td>
<td>Love your enemy. Righteousness, forgiveness, ask, and it shall be given to you, seek and you shall find, knock and it shall be opened to you. Endurance, Love, Humane teachings, Light of Life to mankind, etc.</td>
</tr>
<tr>
<td>15</td>
<td>Yajnavalkya &amp; Narada Smriti</td>
<td>India</td>
<td>1st Century 100-400 AD</td>
<td>Authoritative books on Hindu Law, Rules of drafting, pleading, procedure and judicial conduct. Code of duties.</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>The Holy Quran</td>
<td>Ipsissima Verba of God Himself, Prophet Mohammad</td>
<td>Mecca &amp; Medina</td>
<td>571-614 AD</td>
<td>Prayers, Practice of Charity (Zakat) Fast (Ramadan) Pilgrimage to Mecca, (Hajja), mercy and compassion.</td>
</tr>
<tr>
<td>17</td>
<td>Magna Carta</td>
<td>King John</td>
<td>England</td>
<td>1215 AD</td>
<td>First milestone on the road to the Liberties of people of England “The Great Charter of Liberty”.</td>
</tr>
<tr>
<td>18</td>
<td>The Catholic Doctrine of Natural Law</td>
<td>St. Thomas Aquinas</td>
<td>British</td>
<td>1225-1274 AD</td>
<td>The eternal law is the plan of divine providence and it is absolutely perfect. Roman Law a) To live honorably b) To injure no one c) To give every man his due. Indeed peace is a fruit of justice.</td>
</tr>
<tr>
<td>19</td>
<td>Sikhism</td>
<td>Guru Nanak 1469-1539 AD</td>
<td>India</td>
<td>1500 AD</td>
<td>There is one God. He is the supreme truth. He is the creator and omnipresent. He is eternal and all pervasive – Monotheism.</td>
</tr>
<tr>
<td>20</td>
<td>The Renaissance And Reformation</td>
<td>Germany</td>
<td>1517 AD</td>
<td></td>
<td>Renaissance is heroic view as capable of the responsibilities of bearing rights of human beings. The Reformers view – (Cont’d)</td>
</tr>
<tr>
<td>No.</td>
<td>Event</td>
<td>Author(s)</td>
<td>Country</td>
<td>Year(s)</td>
<td>Description</td>
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<tr>
<td>21</td>
<td>Natural Law</td>
<td>Hugo Grotius, Father of Law</td>
<td>Holland</td>
<td>1583-1645 AD</td>
<td>Referred the common principles among nations as the natural law free from theological pre-suppositions, which culminated in making Natural Law as secular.</td>
</tr>
<tr>
<td>22</td>
<td>Natural Law</td>
<td>Thomas Hobbes</td>
<td>England</td>
<td>1588-1679 AD</td>
<td>The principle of status Quo, preserving peace as the essential theme of the Natural Law.</td>
</tr>
<tr>
<td>23</td>
<td>Natural Law</td>
<td>John Locke</td>
<td>England</td>
<td>1632-1704 AD</td>
<td>Propounded the theory of Natural Rights as an instrument of change and Revolution for establishing a Government based on the consent of the governed.</td>
</tr>
<tr>
<td>24</td>
<td>Natural Law</td>
<td>Jean Jacques Rousseau</td>
<td>France</td>
<td>1712-1778 AD</td>
<td>The original freedom, happiness, equality and liberty existed in primitive societies have lost in the modern civilization.</td>
</tr>
<tr>
<td>26</td>
<td>American Revolution</td>
<td>Sam Adams, Thomas Jefferson, George Washington</td>
<td>America</td>
<td>1775-1781 AD</td>
<td>Manifesto of the concept of the Natural Law.</td>
</tr>
<tr>
<td>27</td>
<td>French Revolution</td>
<td>Bill of Rights</td>
<td>France</td>
<td>1789 AD</td>
<td>Individualism- together with rationalism and realism distinguishing mark to the theory of Natural Rights.</td>
</tr>
<tr>
<td>28</td>
<td>Abolition of Slavery</td>
<td>Abraham Lincoln</td>
<td>America</td>
<td>1809-1864 AD</td>
<td>Fought against slavery and worked for the unity of the country. Successfully established the equality of</td>
</tr>
<tr>
<td>No.</td>
<td>Theorist</td>
<td>Nationality</td>
<td>Year</td>
<td>Description</td>
<td></td>
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<tr>
<td>29.</td>
<td>Marxism</td>
<td>Karl Marx</td>
<td>Germany</td>
<td>1848 AD</td>
<td>Rights and freedom should be granted to individuals irrespective of their classes in the society. Das Kapital came into being principles of which later on culminated as Russian Revolution.</td>
</tr>
<tr>
<td>31.</td>
<td>Russian Revolution</td>
<td>Valdimir Lenin</td>
<td>Russia</td>
<td>1917 AD</td>
<td>Establishment of a new society based on equal distribution of labour and wages, a classes society.</td>
</tr>
<tr>
<td>32.</td>
<td>Theory of Individualism</td>
<td>Immanuel Kant</td>
<td></td>
<td>1924 AD</td>
<td>Last forceful philosopher and apostle of Natural Law Theory.</td>
</tr>
<tr>
<td>33.</td>
<td>Positivism</td>
<td>MontesquieAugust Comte</td>
<td>France</td>
<td>19th Century</td>
<td>The source of human rights is found in the legislative enactment and law has sanctions attached to it.</td>
</tr>
<tr>
<td>34.</td>
<td>Theory of Growth and change of society</td>
<td>Sir. Henry Maine</td>
<td>England</td>
<td>1822-1888 AD</td>
<td>Changes from State to contract individual level is a movement from duty to right culminating in the French Revolution and the Declaration of Rights of Man and of the Citizens. (Anthropological Approach)</td>
</tr>
<tr>
<td>35.</td>
<td>Non-Violence, Untouchability</td>
<td>Mahatma Gandhi</td>
<td>India</td>
<td>1869-1948 AD</td>
<td>Adopted the path of non-violence and Satyagraha to free his countrymen from slavery, coercion, exploitation, discrimination and inhuman treatment. Advocated restoration of basic rights, to all the human beings. Proponent in the removal of untouchability.</td>
</tr>
<tr>
<td>36.</td>
<td>Abolition of Apartheid</td>
<td>Nelson Mandela</td>
<td>South Africa</td>
<td>1909 AD</td>
<td>Fought against Apartheid i.e. racial discrimination tooth and nail.</td>
</tr>
<tr>
<td>37.</td>
<td>The UDHR</td>
<td>UN Charter</td>
<td></td>
<td>1948</td>
<td>All people should have basic rights to live in the society with dignity.</td>
</tr>
<tr>
<td>39</td>
<td>Human Rights Theory</td>
<td>Jacques Martain, Corneleous Murphy, Hemam Montallegree</td>
<td>20th Century</td>
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State Policy to the people.

a) The validity of Human Rights is established by specific legislation. The inherent dignity of human beings is not sufficient. Thus the whole concept has acquired a judicial character.

b) Within the bourgeois legal system, human rights issue received the extended treatment by two branches of law i.e Constitutional and international Law.

c) Human Rights are vested in all individuals and not in any professional groups, tribes, races, classes, caste, nations or other entities.

d) The human rights concept remains immutably valid wherever human beings lead a collective life.

This Act gives teeth to the executive as well as judiciary for the restoration of Human Rights to all the citizens.


The ideas of human rights could be found in Vedic Scriptures of Hinduism. The Vedas, the metrical religious works of the ancient Hindus, offering guidance, inter alia, on religious and social obligations. These constituted the base on which the Hindu Law was built\textsuperscript{48}. Hence, the ancient Indian law was founded on social and sociological concepts and was an admixture of religion and ethics with legal precepts.

Some of the sources of humanitarian law in ancient India were:

1. The four Vedas (verses of wisdom)- Rig, Yajur, Sama and Atharva- and their respective appendices, the Brahmanas which were revelations of the sacred law to the Hindu sages of the Vedic period, approximately 4,000 to 1,000 BC. Rig-Veda cites three Civil Rights, that of Tana (Body), Skridhi (Dwelling place) and Jibhasi (Life). The ‘Shantiparva’, one of the books of the Indian epic, Mahabharatha, sets out in great detail the rules governing the conduct of rulers. This work contains a systematic body of political ideas and embodies a comprehensive theory of kinship and government. It also tells about the importance of the freedoms of the individual (civil liberties) in a State. The concept of Dharma – rights and duties of individuals, classes, communities and castes- has been delineated in our scriptures. It has been all pervading, governing, ordering, regulating and directing human beings in their earthly and spiritual pursuits. It has been a liberating force helping man to attain freedom from bondage, indiscretion and exploitation.

2. The Smritis, namely Dharmasustras, which deal with the duties of men in their various relations and Dharamashastras which are rules for religious observance and expiation;

3. Manu Smriti, compiled around 200 BC has 2,694 verses which expounded a code of conduct covering a wide range of situations and relationships a man could find himself in. Even Arthasastra, the best known ancient Indian Treatise, authorized by Kautilya, based on the principle of law and government, treats of the ‘duties’ of a king towards his subjects rather than of divine ‘prerogatives’. It says: “in their happiness lies his happiness, in their welfare, his welfare”. It also

4. Narada Smriti which emphasis’s that custom overrides any text of law;

5. Puranas, which are a compendium of legends and religious instructions.

See Dr. S. Subramaniam op.cit. p. 56.

6. Upanishads, 112 speculative and mystical scriptures which are best known for their doctrine of Brahman, the ultimate reality of pure being and consciousness.

Law according to Hindu conception is that rule of conduct authoritatively imposed by the divine power as proper for man, as a being capable of eternal existence governing all his activities, public and private affecting inseparably his spiritual and temporal interests. In Hindu Jurisprudence, says Lee in his Historical Jurisprudence, villagers, traders and guilds had their own judicial system which composed of their own men and the presiding officer of the court held the office either by election or by inheritance to local customs, such courts settled the disputes in case of grave crimes or when the condemned party refused to obey the judgement of the local courts, the court presided by the king gave the final verdict in such a case. Thus, the king along with the help of the sabha constituted the inquiry of lawsuits, skillfully, without violating the rules of Dharmasatra and the Arthasastra.

When British ruled India, resistance to foreign rule manifested in the form of demand for fundamental freedom and civil and political rights of the people. The Indian National Congress, which was in the vanguard of freedom struggle, took the lead in this matter. The very choice of the name- The Indian National Congress- to denote the all-India umbrella organization launched in 1885 echoed the American experience a century earlier. The constitution of India bill 1895 prepared by the Indian national congress, also known as ‘home rule document’, talked about a constitution guaranteeing every one of the citizens basic human rights like freedom of expression, inviolability of one’s own home, right to property, equality before law, etc.

In August 1918, Indian National Congress demanded incorporation of a Declaration of the Rights of the people of India as British Citizens. It demanded.

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52 See S.N. Sen essays on “Hindu Jurisprudence”, p. 12.
54 The American Declaration of Independence in 1776 was made by the Continental Congress that has been established two years earlier to state grievances and appeal for relief. See, Daniel J. Boorstein, The Americans. The National Express (New York: Vintage, 1965) pp. 337-379, 407.
and Property, Freedom of Speech and Press and the right of Association. In the Delhi Session of December 1918, and the Right of Association. In the Delhi Session of December 1918, Indian National Congress included the Principles of self-determination as one of the basic rights.

The rights emphasized committee report are:

1. Personal Liberty, Inviolability of dwelling place and property.
2. Freedom of conscience and of profession and practice of religion subject to public order and morality.
3. Right of free expression of opinion and to assemble peaceably and without arms and to form association and union subject to public order and morality.
4. Right to free elementary education and in the matter of admission into any educational institution maintained and aided by the state without distinction of caste or creed;
5. Equality for all citizens before the law and in civil rights;
6. Right to every citizens to the writ of Habeas corpus;
7. Protection of respect of punishment under ex-post facto law;
8. Non discrimination against any person on grounds of religion, caste or creed in the matters of public employment, office or power or honor and in the exercise of any trade or callings;
9. Equality of rights to all citizens in the matter of access to, and use of public roads, wells and other places of public resort;
10. Freedom of combination and association for the maintenance and implementation of labour and economic conditions;
11. Right to keep and bear arms in accordance with regulations; and

Lahore congress of 1930 declared freedom from foreign rule as a fundamental right Karachi congress passed a resolution in 1931 on 'Fundamental

See Dr. S. Subramaniam op.cit. p.57.

Lahore congress of 1930 declared freedom from foreign rule as a fundamental right. Karachi congress passed a resolution in 1931 on ‘Fundamental rights and social change’ in three parts; (a) Fundamental rights and duties; (b) Labour and (c) Economic and Social program.\

Sapru committee in 1945 stressed on the need for written code of Fundamental rights. In the constituent assembly (1946) also demanded for Declaration of Fundamental Rights was raised. India has been making sincere efforts, not only to ensure enforcement of the fundamental, civil and political rights, but also of as many socio-economic rights as the limited resources of the country permit.

Promulgation of the Constitution by the people of India in January 1950 is watershed in the history of Development of the concept of human rights in India. The Preamble, Fundamental Rights and the Directive Principles of State policy together provide the basic Human Rights for the people of India. Rule of law is the basis of the Indian system of rights. India has accepted and ratified almost all the major conventions and covenants adopted by the United Nations and its specialised agencies. See Table II

Table II

<table>
<thead>
<tr>
<th>S. No.</th>
<th>International Covenants/Conventions/Treaties</th>
<th>Ratified</th>
<th>Acceded</th>
<th>Signed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>The International Covenant on Economic, Social and Cultural Rights (ICESCR)</td>
<td>10th April, 1979</td>
<td></td>
<td></td>
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<tr>
<td>2</td>
<td>The International Covenant on Civil and Political Rights (ICCPR)</td>
<td></td>
<td>10th April, 1979</td>
<td></td>
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<tr>
<td>3</td>
<td>The International Convention on Elimination of all forms of</td>
<td>3rd December 1968</td>
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</tbody>
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<table>
<thead>
<tr>
<th></th>
<th>Convention on Elimination of all Forms of Discrimination Against Women</th>
<th></th>
<th>30th July 1981</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment</td>
<td></td>
<td>8th October, 1997</td>
</tr>
<tr>
<td>6</td>
<td>International Covenant on Suppression and Punishment of the Crime of Apartheid -</td>
<td></td>
<td>22nd September, 1977</td>
</tr>
<tr>
<td>8</td>
<td>Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity</td>
<td></td>
<td>12th January, 1971</td>
</tr>
<tr>
<td>9</td>
<td>Slavery Convention</td>
<td></td>
<td>18th June, 1927</td>
</tr>
<tr>
<td>10</td>
<td>Protocol amending the Slavery Convention</td>
<td></td>
<td>25th September, 1926</td>
</tr>
<tr>
<td>11</td>
<td>Supplementary Convention on the Evolution of Slavery, Slave Trade and Institutions and Practice similar to Slavery</td>
<td></td>
<td>23rd June, 1960</td>
</tr>
<tr>
<td>12</td>
<td>Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others</td>
<td></td>
<td>9th January, 1953</td>
</tr>
<tr>
<td>13</td>
<td>Convention on the Nationality of the Married Women</td>
<td></td>
<td>15th May, 1957</td>
</tr>
<tr>
<td>14</td>
<td>Convention on the Political Rights of the Women</td>
<td></td>
<td>1st November, 1961</td>
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</tbody>
</table>


India has made the most sincere efforts for the protection and promotion of human rights the world over and is the greatest champion of the human rights in the Third World. The preamble of the Indian Constitution declares India to be a
Sovereign, Socialist, Secular, Democratic, Republic. The Constitution of India, to achieve the above stated objectives, has given a special place to the Chapter of Fundamental Rights in Part III and Directive Principles of State Policy in Part IV of it. These together constitute the conscience of the Constitution.

A comparison of Universal Declaration of Rights (1948) and Fundamental Rights enunciated in Part III of the Indian Constitution would reveal many similarities in content and form. Though the framers of Constitution of India would have been influenced by the British Legal concepts and the American Constitutional traditions, one cannot wish away the impact the Universal Declaration of Rights (1948) must have had on the minds of the makers of the Indian Constitution due to its contemporaneous character at that time. See Table III

Table III
Similarities between Indian Constitution and Universal Declaration of Human Rights.

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Subject</th>
<th>Indian Constitution</th>
<th>Universal Declaration of Human Rights</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Equality Before Law</td>
<td>Art.14: The state shall not deny to any person equality before the Law or the equal protection of the Law within the territory of India.</td>
<td>Art 7: All are equal before the Law and are Entitled without any discrimination to protection of the Laws entitled to equal protection against Any discrimination in violation of this declaration and against any incitement to such discrimination</td>
</tr>
<tr>
<td>2</td>
<td>Prohibition of discrimination on grounds only of religion, race, caste, sex, or any of them</td>
<td>Art 15(1): The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex,</td>
<td>Art 2 Para(1): Everyone is entitled to all the rights and freedom without distinction of any kind, such as race, sex, place, caste, religion,</td>
</tr>
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<thead>
<tr>
<th></th>
<th>Protection in respect of conviction for offences</th>
<th>Protection of life and personal liberty</th>
<th>Prohibition of traffic in human beings and forced labour</th>
<th>Protection of interest of minorities</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Age 20(1): No person shall be convicted of any offences except for violation of law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.</td>
<td>Article 21: No one shall be deprived of his life or personal liberty except according to procedure established by law.</td>
<td>Article 23(1): Traffic in human beings and 'Begar' and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with Law.</td>
<td>Article 29(1): Any section of the citizens residing in the territory or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.</td>
</tr>
<tr>
<td>4</td>
<td>Article 11(2): No one shall be held guilty of any penal offence on account of any act or omission, which may not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.</td>
<td>Article 3: Everyone has the right to life, liberty and security of person.</td>
<td>Article 4: No one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all its forms.</td>
<td>Article 22: Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and the resources of each state, of the economic, social and cultural rights indispensable for his growth.</td>
</tr>
</tbody>
</table>
Art 32(1):
The right to move the Supreme Court by appropriate proceedings for the enforcement of rights conferred by this part is guaranteed.

Art 8:
Everyone has the right to an effective remedy by the tribunals for acts violating the fundamental rights granted to him by the Constitution or by Law.

According to Justice M.N. Venkatchaliah, the 'Human Rights' philosophy is the quest for translating the International standards of human rights "from phrase to action". The incorporating of a bill of rights in written constitution is to incorporate the Human Right regime into the municipal law and make them justifiable and enforceable. If it is so incorporated in the Constitution, which is fundamental law of land, Human Rights transforms themselves into enforceable rights.

However, the Indian Constitution provides for affective machinery for the enforcement of fundamental rights. If a fundamental right is interfered with by an act of the executive or by a State Law, any person entitled to the right can move the Supreme Court to get the act or law declared unconstitutional.

Initially the attitude of judiciary in India towards the Directive Principles was not favorable and it had nullified much important legislation embodying socio-economic reforms. However, with the passage of time there has been a shift in the attitude of the Indian judiciary towards socio-economic rights contained in Part IV of the Indian Constitution. The court felt the necessity of a change in its earlier outlook.

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58 See Article 32 and 226 of the Indian Constitution.
Justice Bhagwati’s observation reflects a shift in Indian Judiciary’s attitude towards economic and social rights. His lordship observed that:

"The Directive Principles enjoyed a very high place in the Constitution scheme and it is only in the framework of socio-economic structure in Directive Principles that Fundamental rights are intended to operate, for it is only then that they can become meaningful and significant for the millions of our poor people who do not even have seen necessities of life and are living below the poverty line or level".

Hence, human rights are those minimal rights, which every individual must have against the state or other public authority by virtue of his being a member of the human family irrespective of any other consideration.

On August 12, India, as a proud member of international community, proudly commemorated the 50th anniversary of the revised Geneva Convention of 1949. Today 188 countries out of 192 are party to the four conventions, giving universal acceptance to the humanitarian values enshrined in them. Consequently, these conventions represent the most universally acknowledged treaty of armed conflicts and previously known as the law of war. See Table IV

Table IV

<table>
<thead>
<tr>
<th>The Revised Geneva Conventions of 1949</th>
</tr>
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<tbody>
<tr>
<td>1864 First Convention: Protection of wounded and sick members of the armed forces, medical personnel, chaplains.</td>
</tr>
</tbody>
</table>

1907 Second Convention: Protection of the shipwrecked wounded and sick, medical personnel, chaplains of armed forces at sea.


Source: "India's rich heritage" by Savita Varde-Naqvi in The Hindu August 1997

The Geneva Convention aim at human survival in war and protection of human dignity in situations of armed conflict. They constitute the branch of law of nations, which governs relations between states. Hence their scope is supranational and it is legally binding on all the states. They seek to mitigate the effects of war by obligating on the belligerent parties to spare persons who do not or are no longer participating in hostile actions. At the same time they also limit the choice of means and methods of conducting military operations. In short Geneva Convention try to strike a compromise between military necessity and humanitarian concerns.

India’s contribution by way of customary law to the development of the Geneva Conventions is significant and dates back to ancient times. It is an admixture of religion and ethics with legal precepts. In all wars fought in the sub-continent in the post-Independence period, the spirit of Geneva Convention was fully respected by India. In the aftermath of the 1971 war with Pakistan, India looked after and repatriated 93,000 prisoners-of-war.

"Problematizing human rights in India.

The post-independence campaigning activity on behalf of human rights remained comparatively muted until the period of the internal emergency in the mid-1970s. Even today the number and strength of groups that use the human rights label is relatively small and they are, in the main, active in the large

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63 See "India’s rich heritage" by Savita Varde-Naqvi in The Hindu August 1997
metropolitan centers of Delhi, Bombay, Calcutta. The ongoing debate in the Indian community on an endogenous understanding on how rights should be defined provides some clues as to why this is so.

A good introduction to this debate is provided by Rethinking Human Rights (1989), a collection published by Lokayan, the Delhi-based group started by the political scientist and activist, Rajini Kothari. Among the problems it highlights are three issues that are absolutely central: defining rights in a context of need, the application of an individualist conception of rights to a society that finds it foreign, and a state centered view of rights in a country where some of the worst abuses arise from the social flux prompted by inequality, economic change and the exploitation of caste and communal distinctions.

The basic need argument is one that has been most forcefully forwarded as a policy recommendation by R. J. Vincent and Ali Mazrui. Vincent argues persuasively that:

"Economic and social rights (the right to subsistence) and civil and political rights (the right to security) are interdependent if something resembling a minimally satisfactory human life is to be lived."

Mazrui, addressing the problem of how to relate the provision of international aid to human rights, goes much further in revitalising the latter. He says that:

"The need for food, for clean water, for health .... For shelter, is so clearly universal among human beings that it forms a less culturally relative basis of aid transaction than the need for political freedom."

The most powerful assertions of rights in the Indian context have come not from movements whose appeal is couched primarily in the form of class (trade

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65 See Harsh Sethi and Smitu Kothari (ed.), "Rethinking Human Rights Challenges for Theory and Action" (Delhi: Lokayan, 1989), Appendix 2, pp. 176-179
unions, peasant organisations) or gender (feminists or the suffragettes of yesterday) but from those using the legacy, often at least in part invented, of people sharing a common language, religion, caste or tribe. Among the host of examples of the latter are the Sikhs, the Kashmiris, the Assamese, the Nagas and the various backward class, dalits and adivasi movements found nation-wide. In a plural, heterogeneous situation, the latent discourse of those who demand and deny rights is therefore often conducted not in terms of the state, civil society and the citizen but of nation, culture and caste or religious community.

The philosophy of human rights in the world over has today proved to be dynamic and in continuum transformation. The challenge is to achieve the appropriate balance between, on the one hand, the need to maintain the integrity and credibility of the human rights tradition and on the other hand, the need to develop a dynamic approach that fully reflects changing need and perspectives and responded to the emergence of new threats to human dignity and well-being. Those who have attached greater importance to the first rather than to the second of these goals have long voiced fears that the endorsement of new human rights would be the equivalent of trying to rewrite the Koran or the Bible or the Gita. The success of a considerable range of new instruments adopted over the past five decades has served to encourage demands for the recognition of additional rights. The concept of human rights is now an all-comprehensive term of wide import. It must be remembered that at different times and or in different places different aspects of human rights have been emphasised depending upon social facts.