CHAPTER 1
Introduction: Tibet as a Human Rights Issue

The human civilization is about to complete the journey of the 20th century during which mankind has made spectacular progress in various spheres of life including science, arts, education and culture. However, in its onward march, the human civilization has lost its track somewhere and seems to have reached at a stage where the very survival of mankind is at stake. The culprit is no one but man himself and only threat to man is man himself. Thus, the predicament of humanity is that it finds itself on the threshold of best of times and worst of times, all at once.

The greatest challenge before the mankind is how to preserve the human race and utilise the vast knowledge and sources available today for the development and welfare of mankind. The solution may perhaps lie in the enlightened and strong sense of moral responsibility on the part of every nation, community and individual towards the rights of other nations' peoples and world as a whole. It is due to this realisation that the idea of human rights .... the greatest single idea offered by human mind to humanity has
become one of the great driving forces of our time.\(^1\) Today it occupies the pride of place in global as well as local and governmental scheme of things and symbolises the hold in such a way that "there remains hardly a state without written constitution - and almost everywhere it has been the ambition of drafters to include as comprehensive a section on fundamental rights as possible in their work. While on international plane advocating human rights and fundamental freedom has almost become part of a ritual.\(^2\)

**Origins of Human Rights:** Before going in detail about the subject matter, it is necessary to discuss the origins of Human Right's. They are as follows:

**A) Human Rights in Antiquity:**

The contemporary pursuit of human rights is not just a modern fad. Rather it is as ancient as the very dawn of human civilization and for centuries they have been regarded as the very foundation of civilized life because they were considered to be those

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1 Nani A. Palkhivala, *We, the Nation* (New Delhi, 1994), pp.22-23.

individual rights or liberties emerged. American Bill of Rights and the Declaration of Independence (1776) and the French Declaration of Rights of Man (1789) were human rights milestones in expounding 'the concept that rights and freedoms belong to all men and women, equally and irrevocably simply because they are members of the human family. And a number of recurring themes and concepts emerged from them which laid the foundation of modern human rights.

The basic principle was the equal dignity to all human beings. Though it is a 'product of Enlightenment, but its general thrust has resonance in diverse spiritual and cultural experiences. In terms of political value, like the concept of democracy, it is an important civilisational step forward for all human beings and cultures. But ironically these and other events, however significant, were limited to domestic context. It was primarily because of the prevailing concepts in traditional international law that states are

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5 Bertucci (ed.), op. cit., p.23.
exclusively competent for matters essentially within their domestic jurisdiction and only states are subjects of international law.\(^8\)

**B) Process of Internationalization:**

Furthermore in the first half of the 20\(^{th}\) century humanity encountered new challenges. During both the world wars there had been total annihilation of existing jurisprudence and genocide became the rule of law which had shaken the conscience of mankind and increased international concern for human rights. The League of Nations was the first attempt at an intergovernmental level to ensure peaceful resolution of conflicts, they created limited protection for the inhabitants of certain former colonies brought under the Mandate system and for national minorities in certain territories by a network of treaties\(^9\) but the scope was not broaden to include all human beings because still League's concern were more with the states rather than individuals. Hence it could not contain the outbreak of Second World War.

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\(^9\) Ibid.
It was recognised only after the Second World War that effective measures are a must for the protection of human rights and essential condition for everlasting peace and prosperity. In other words, peace and progress were considered not possible in a world where gross violations of human rights had taken place. It was specifically contemplated that necessary steps would be taken to facilitate solutions of other humanitarian problems which obviously included restoration and recognition of human dignity based upon a set of inalienable rights. Thus in the emerging new world order, maintenance of international peace and security, creation of a condition conducive for economic and social development and encouragement to respect for human rights were considered to be closely interlinked and equally important objectives.10

With this commitment the charter of UN came into existence. In the preamble itself the UN reaffirmed "faith in fundamental human rights, in the dignity and the worth of human person, in the equal rights of man and women and of nations large and small."

In addition seven more articles were included in the charter, among those the most important provisions are contained in the Art. 55 and 56\textsuperscript{11} which provided rights and freedoms to every human being without any distinction of race, sex, language, and religion and made it not only of national interests but of international concern by clearly expressing the obligation of all members for the promotion of human rights. Thus the charter has laid the conceptual and legal foundations for the future development of international measures to protect human rights.\textsuperscript{12}

Having adopted the charter, the UN had set for itself threefold task in the field of human rights… Declaration, Codification and Implementation or Protection.\textsuperscript{13} The first phase of the task was completed on 10 December 1948 when UN General Assembly adopted the Universal Declaration of Human Rights which recognized a set of thirty rights enumerated there in for every human being irrespective of any other considerations.\textsuperscript{14}


\textsuperscript{13} Robertson, op. cit., p. 26.

The declaration not only reasserted the traditional civil and political rights which are catalogued in its first twenty articles but also included the second generation of rights and characterised them as genuine human rights which were nothing more than the social and cultural aspirations up to that time. Perhaps this is the clearest manifestation of humanity's commitment aimed at to give all people freedom from fear and want. Emphasising its high political and moral character Mrs. Roosevelt stated in the General Assembly that it might well become the Magnacarta of all mankind\textsuperscript{15} while others termed it the lodestar of the international community.

Although the declaration was originally adopted in non-legally binding form but John Humphrey cogently argues that in addition to moral and political authority, the justifiable provisions of the Declaration ... have now acquired the force of law as part of the customary law of Nations.\textsuperscript{16} However, its precise legal status still is the subject of debate but a declaration of this kind... adopted and accepted even in principle, by almost all governments of the

\textsuperscript{15} Robertson, op. cit., p. 27.

world of widely differing cultures and social systems, is a remarkable achievement\textsuperscript{17} and now in use literally right around the world, for judging the justice and more often injustice of all political regimes, with the underlying objectives of enhancing the dignity and well being of all individual humans.\textsuperscript{18}

The next step was the preparation and passage of a covenant embodying specific legal obligation and adequate machinery to enforce it. But with the onset of cold war, international consensus has evaporated and the politics of priorities have emerged. However, the consensus was reached after gap of 18 years. Three separate instruments have emerged as a measure of compromise i.e. (i) International Covenant on Civil And Political Rights; (ii) International Covenant on Economic Social and Cultural Rights; (iii) Optional Protocol which took another 10 years to come into force because of the stipulation that they would enter into force only when ratified or acceded to by 35 states.\textsuperscript{19} Many other states have ratified subsequently.\textsuperscript{1} As of January 1993, 115 states have ratified

\textsuperscript{17} Neil MacDermot, \textit{The Credibility} (Gap in Human Rights, The Review, Year 1998), p.23.


the International Covenant on Civil and political Rights and 118 have ratified the International Covenant on Economic Social and Cultural rights - while there were 67 ratification's for the optional protocol.20

Thus from the above discussion it is evident that 'Human rights' as the term most commonly used, are the rights which every human being is entitled to enjoy and to have protected. The underlying idea of such rights - fundamental principles that should be respected in the treatment of all men—women and children—exists in some form in all cultures and societies. The contemporary international statement of those rights come from the UN Charter, which have been interpreted and explained in universal declaration of human rights. These have been further elaborated and developed according to the social necessities and given legal validity by the two covenants. They not only spelled out attributive right to emphasize the concept of liberty and the principle of equality which society should ensure without discrimination but also the solidarity rights for groups as whole.

20 Partsch, op. cit, pp.594-95.
The right to self-determination is clear example of this which has been contained in Art. 1 of both the covenants and categorically stated in identical terms that "All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." These two covenants along with the option protocols are together known as the International Bill of Human Rights and have served as the inspiration for some 80 conventions and declarations that have concluded within the UN on a wide range of issues.

Thus today exist a substantial corpus of international human rights law and a large number of areas and mechanism for dealing with human rights violations at all levels. At the UN World Conference on Human Rights in June 1993, States reaffirmed their "solemn commitment.... to fulfill their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms in accordance with the charter of


the United Nations and other instruments relating to human rights and international law".\textsuperscript{23}

However, the third phase, that is the protection and implementation of human rights, which has greater relevance today is still an unfulfilled dream. There is inadequate international machinery for enforcement of these rights, hence there is no effective monitoring of rights. Samuel Kim in his analysis has labeled this distinction as one between value shaping and value realizing.\textsuperscript{24} The principal problem in this is that the UN is an organization of member states and some state governments either insist on honouring state sovereignty or engage inconsistent human rights diplomacy.\textsuperscript{25}

It is against this backdrop when the world is ushering into twenty first century, one of the most paradoxical situations has emerged - there is a wide spread concern for universal respect and observance of human rights, at the same time gross violations of


\textsuperscript{24} Sammuel Kim, \textit{The Quest for a just World Order} (Colorado, 1984), pp. 229-43.

internationally recognised norms continue unabated in almost all parts of the world. The right to life, to adequate standard of living, to freedom of expression, to protection from torture or inhuman treatment, arbitrary arrest and many of the common standards of achievements for all the peoples and nations are far from realization now as ever. The obligations set out in scores of international conventions and multilateral treaties for the promotion and protection of human rights by most of the government are flouted by themselves with impunity. Consequently there are many communities in the world which are suffering heavily on account of being deprived of their rights. The Tibetans constitute such communities.

Tibet as a Test Case

Tibet is situated in the heart of Asia, which has been called as Tibetan high land plateau in geography text books26 and is popularly known as "roof of the world". It is an unique geographical

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entity with varied climatic conditions which stretches across the Himalayas.

The people known as Tibetans inhabit the region. They belong to the Mongoloid race just like the Chinese but they differentiate themselves from Chinese on the basis of origin. The most popular ethmogenic myth is that their parentage to a monkey (father) and rock ogres. The monkey is believed to be a reincarnation of Boddhisaltva Avalokiteshvara and the rock that of an ogress.  

They have their own language i.e. Tibetan language which is spoken in entire plateau with varied regional dialects, is distantly related to Burmese and more distant by still to Chinese. It has a single unified writing system since the seventh century borrowed from an Indian prototype but unrelated to Sanskrit or any other India language.

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29 Ibid.
They have a common religion which is known as Tibetan Buddhism. Though it had gone there from India during the seventh century A.D. but it got Tibetanised in the course of history. The process, however, did not change the essence and logic of its philosophy instead it enriched and refined it.

They have not only a common culture but a unique civilization, which is comparable to other great civilization of Europe and East.30 The late Prof. Giuseppe concluded that Tibet represented a unique case of full-blown Mahayana Tantric Buddhist cultural category that was hard to find in other parts of Asia.31 Apart from this religious culture they have a common cultural traits such as personal names, food, dress, marriage institutions, birth and death rituals.

Thus the Tibetans are certainly a as per UNESCO's definition "people" because they possess all the necessary objective identifiable criteria of a distinct people, including a distinct language, religion, culture, traditions and customs, history and

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territory. Tibetans meet all other subjective criteria such as shared preferences, values and common destiny. The conclusion on the committees on evidence suggests that "the Tibetan people satisfy all criteria to be 'people' and are a people under international law". Therefore, Tibetans are entitled to exercise their right of self determination. In 1961, the UN General Assembly recognized this right and passed a resolution for "the cessation of practices which deprive the Tibetan people of their fundamental human rights and freedom including their right to self-determination. The situation in Tibet is particularly pathetic and tragic not only because of China's domination is based on continuing refusal to allow the Tibetan people to exercise their right to self determination but also because it has brought suffering on a scale so broad that Alexander Solzhenitsyn has described it 'more brutal and inhuman than any other communist regime in the world."

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After invasion in 1949-50 the People's Republic of China (PRC) started reconstructing the Tibetan society on the basis of Maoism and Chinese cultural superiority and autocratic and repressive measures were imposed with the aim of total subordination of Tibetans to the Chinese social and political control. Even though Tibet was officially regarded as an "Autonomous Region" within PRC, that status has not precluded the prosecution and oppression against Tibetan religion and culture the most prominent symbol of Tibetan identity.

There was tremendous discontent among the Tibetans and the rebellion began first to the eastern areas of Tibet (Now outside TAR) because they were the primary target of Chinese policies but soon it spread to other areas, culminating in uprising in Lhasa in 1959. Eventually, the Dalai Lama fled to India along with his 80,000 supporters. The rebellion was finally crushed after large scale killing and imprisonment. A book marked "Secret" was published in Lhasa.


on 1 October, 1960 by the Political Department of the Tibetan Military District with reference to the aftermath of the Lhasa uprising stated, "From last March up to now we have already wiped out (Xiamie) over, 87,000 of the enemy.37

Tibetans were subjected to class divisions and class conflict, and those who had participated in or supported the revolt were arrested and imprisoned. Monasteries were also subjected to democratic reforms.38

The International Commission of Jurists found, after a preliminary investigation, that there was prima facie evidence that genocide was committed.39 The Legal Enquiry Committee set up to investigate the available evidences concluded that acts of genocide had been committed in Tibet in an attempt to destroy Tibetans as religions group. The committee further found that the Chinese

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authorities in Tibet had violated sixteen articles of Universal Declaration of Human Rights.\textsuperscript{40}

The UN General Assembly in its three successive Resolutions (in 1959, 1961 and 1969)\textsuperscript{41} had expressed grave concern at the violation of fundamental human rights of Tibetans and the suppression of their distinct cultural and religious life and autonomy which they had been enjoying since long.

The "Cultural Revolution was the extreme manifestation of the Chinese policy when the Chinese government waged war on 'the four old' old ideas, old culture, old custom and old habits\textsuperscript{42} and involved in a relentless campaign to destroy the Tibetan culture and religion in all its forms. Upto the end this large number of Tibetans have lost their lives and suffered serious injury and deprivation and the vast majority of monasteries were destroyed. The Tibetan sources indicate that 1.2 million died as a result of Chinese occupation, which is approximately 1/5\textsuperscript{th} of the population of Tibet

\footnote{\textsuperscript{40} Legal Inquiry Committee on Tibet, \textit{Tibet and the Chinese People's Republic} (New Delhi, 1966), pp.3-5.}

\footnote{\textsuperscript{41} International Resolutions and Recognisitions on Tibet, op. cit., pp.4-6.}

\footnote{\textsuperscript{42} ICJ Report (1997), p.72.}
and over 6,000 monasteries have been destroyed. In brief, these were terrible times for Tibetans in Tibet. The death of Mao in 1976 brought the end of "Cultural Revolution" in China and as a part of this general liberalization China made a number of unilateral gestures in Tibet such as releasing a group of prisoners, announcing that Tibetans would be able to visit abroad and issuing visas to visit Tibet to a group of Tibetans living in exile. This move soon developed into strategy and in 1979 the Chinese authorities encouraged the Dalai Lama to send the first series of delegations to investigate current conditions in Tibet with a view to preparing the way for his return. Beijing believed that the conditions in Tibet had definitely improved and that the Dalai Lama's challenge could be met. But contrary to the Chinese expectation the Tibetan delegations received tumultuous welcome everywhere in Tibet.

44 Melvyn C. Goldstein and Cynthia M. Beall, Nomads of Western Tibet: The Survival of a Way of Life (Berkeley, 1990), pp.40-46.
45 Melvyn C. Goldstein, The Snow Lion and The Dragon, China, Tibet and the Dalai Lama (Berkeley, 1998), p.61.
including Lhasa, which astounded the authorities. The second delegation visit to Lhasa in 1980 had to be terminated after the reception threatened to become uncontrollable.\textsuperscript{48} Beijing's external strategy was paralleled by a new internal strategy to resolve the Tibetan question. Therefore in May 1980 the CCP General Secretary Hu Yaobang and Vice-Premier Wan Li made an unprecedented fact finding visit to Tibet... publicly announced the six point reform programme for Tibet.\textsuperscript{49} These included the promotion of Tibetan culture so far it did not clash with socialist orientation, including put an end to collectivization tax holding for Tibetan farmers and herdsman and a deliberate policy of reducing proportion of Han cadres in Tibet.\textsuperscript{50}

The loosening of social restrictions led to revival of Tibetan civil and cultural life and with it a resurgence of religious activity. Tibetans flocked to newly reopened temples which became the


locus of Tibetans political revival.\textsuperscript{51} The unexpected result of the post-Maoist liberalization showed them that Tibetans have not reconciled the Chinese rule.

Therefore, in the 1984 Second Tibet Work Meeting Hu's approach was criticized and adopted the new strategy of economic development that required the introduction of large number Chinese cadres and experts into Tibet and also permitted the entry of thousands of petty entrepreneurs\textsuperscript{52}. This policy has resulted into influx of Chinese brought new threat to their identity.

Meanwhile in the wake of this new strategy the Dalai Lama took the initiative to "internationalize" the issue by taking support from the western countries. He unveiled his Five Point Peace Plan before the US Congressional Human Rights Caucus.\textsuperscript{53} The speech sparked demonstration in Tibet in support of the Dalai Lama's initiative, which exalted into a series of riots. It was violently repressed and in 1989 martial law was declared which lasted more


\textsuperscript{52} Ibid, pp.586-87.

than one year. According to Amnesty report at least 200 civilians were killed by the security forces between 1987-90\textsuperscript{54} and large numbers of people were detained.

The Tibetan riots of March 1989 were followed by the Tienanmen Square massacre of June 1989. This increased the international (western) concern in Tibetan affairs and some sanctions were imposed against China. But China developed new hard-line policy of more effective security measures and began limiting further religious and cultural liberalization. At the same time it accelerated a programme of rapid economic development.\textsuperscript{55} This policy was officially confirmed from the above in the 1994 Third National Forum. It identified the Dalai Lama's influence as the main source of insatiability and strategies were devised to eradicate his influence not only from politics but also from religion. It also included: the curtailing spread of religious activity, including increased control and surveillance of monasteries, stepped up control and repression on political activities, enhanced the


ideological content of education and for the first time fully endorsed the economic development and the transfer of population.

Thus the China's approach is now based on three pronged strategy viz.:

(i) Neutralize the influence of religion among Tibetans;

(ii) Integration of Tibet into China through changing its demography

(iii) Acculturation through education

The succeeding years shows more hardening of these policies. In 1995, on the Panchen Lama's reincarnation issue China challenged the religious authority of the Dalai Lama by denouncing his selection as "political trickery" and exerted its political authority by selecting the another boy as true incarnation. In 1996 China launched its nation wide "Strike Hard" campaign to crack down on crime and corruption. In Tibetan context it has been used to indoctrinate recalcitrant monks into patriotism. Therefore,

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56 (See for more details), in Asia Watch and Tibet Information Network on Human Rights, in Cutting off the Serpent's Head, op. cit., pp.20-45.
monasteries were placed under "Democratic Management Committees" and during the "re-education" monks were required to sign loyalty pledge and denounce the Dalai Lama or face expulsion. In 1997 "re-education" campaign was made intensive and extended to other areas as the head of the Tibetan Ethnic Religious Committee declared, "If the patriotic "re-education" is carried out only in the temples the instability will continue."\(^57\) It is not only the Dalai Lama but Buddhism itself was on target. In July 1997 "TAR" Party Secretary Chen Kuiyuan, declared that "Buddhism is a foreign culture."\(^58\) In 1998 the campaign was further intensified and extended to the remotest part Ragdi, Chairman of the Standing Committee of "TAR" announced it clearly that the real purpose of the campaign was not merely so called patriotic education but indoctrination.\(^59\) The Chinese Government also attributed that the influence of religion was the main obstacle in the economic development of the region. Therefore, in 1999 propaganda drive


\(^58\) Ibid.

was launched to promote atheism.\(^{60}\) And so apart from making stricter control on curtailing the influence of religion and the Dalai Lama, China is vigorously pursuing other two strategies.

ICJ report (1997) says in its concluding observation that Chinese policy statements confirm that there has been increasing influx into Tibetan areas due to government policies and programs to change the socio-religious character of the region. Particularly cadres and professional were encouraged for voluntary migration by Chinese Government.\(^{61}\) In November 1998 Ragdi said, "We need to encourage Chinese citizens, state owned collective enterprises, individuals and private enterprises to come to Tibet to run secondary and tertiary industries and to develop modern farming."\(^{62}\) The result of "the massive (state encouraged) population transfer into Tibet, with its accompanying economic and physical dislocation, discrimination, overburden on the fragile environment, exploitation of resources restrictive child bearing practices and threats to the physical health of Tibetans is not just infringing on the

\(^{60}\) Ibid., p.3.


\(^{62}\) TIN News Review, No.27, op.cit., p.2.
Tibetans human rights, it is threatening the survival of the Tibetan people and culture. But China encourages this massive influx because she considers that it will be major stability factor.

China is also banking on the 'process of acculturation' and trying to use the education system to create a 'modern' better-educated elite through the addition of ideological education in school system. Tibet government officials were ordered to recall their children also were attending school in Dharamsala.

Thus China's new approach is based on destruction of the people from their life, ways and thought. It is not killing and extermination of race or group exactly but the policy is just allow them as a sampling of people to survive. The idea behind this is to assimilate them is the Chinese social and cultural fold for the sake of integration.

64 As described by Deputy Director of PSB to EU delegation, Visit to Tibet By EU Troika Ambassadors 1-10 May 1998.
65 This will be dealt in other Chapter.
It is against this backdrop of China's crack down on every institutions and symbols that nourish their distinctive identity there remains resentment against Chinese rule which is exacerbated by the determination of authorities to suppress any opposition. Therefore, imprisonment, torture and discrimination all have become characteristic feature of Chinese rule.

On this basis westerners consider it a human rights issue which goes along with their conceptual framework of human rights. This will be discuss in Second Chapter.

In the Dalai Lama's views Tibetans are suffering unending cycle of repression and cultural genocide. Therefore his making a movement of Save Tibet campaign applying the philosophy of Buddhist moral principles. This will be discussed in Third Chapter.

China argues that Tibet has made economic improvement under her rule and Tibetans are also enjoying the democratic and religious rights granted under the provision of the Chinese constitution. Therefore, China considers any argument made by the westerners is an interference in her internal affairs and the Dalai Lama's movement. This will be discussed in the Fourth Chapter.
Despite China's official position, Tibetan social life is being regulated by the Chinese authorities. Hence there is violation of the Tibetan's right to life, religious rights, social and economic rights and various other rights. Which contravenes the international legal norm. This will be discussing in the Fifth chapter. Thus the question of Tibet is an issue of universal human rights.