CHAPTER I

INTRODUCTION
I.1: Some Conceptual Questions

The thesis opens with an examination of the problems inherent in using the accepted defining characteristics of human rights on criteria capable of being strictly applied to verify whether any claimed rights should be accorded human rights status or to determine whether a particular country has given effect to a right so established. Since the idea of human rights is not an obvious one, its approaches different from place to place and from time to time. International Conventions state it at length in relation to a large number of rights. People seeking for states assert it in its collective form, Sometimes as a way of becoming states themselves, Sometimes as a bid for recognition of their groupness by states. Non-governmental organizations make its observance their raison d'etre. Individuals in extremis apped to it.

There is not a regime in the world today that does not profess to respect human rights. Yet there is hardly any political leader, Sensible or otherwise, who can still articulate with confidence just what 'human rights' mean. Moreover, part of the confusion over human rights stems
from the very vogue the conception enjoys. Anything so parted about through all the nations is bound to lose much of its pristine core of meaning. It is also the case that regimes accused of violating human rights have a penchant for redefining those rights so as to bring themselves into compliance. But political inconsistency and hypocrisy account only for a part of the confusion over human rights. Looming behind them is a problem of more theoretical type. In order to say what we mean by human rights, we must know what we mean by 'human'. By human, in turn, we must mean more than "born of human parents".

The strongest wrought into the very principles of human nature, is self-preservation. Nature teaches all creatures the general rule of self-preservation, but only in human beings does this rule operate through a potentially rational mind that produces knowledge of death and its causes, as well as a personality that seeks to sustain and continue to express itself. The mind's knowledge necessarily leads to anxiety and to an overwhelming urge to improve one's physical condition so as to postpone death and minimize the suffering that brings death nearer. Hence the root human need is, in modern phrase, 'Comfortable Preservation', or what one more expansively calls 'that tranquillity of mind which arises from an individual's opinion of his security'. The basic raison d'être and responsibility of government is then not only to provide immediate physical security but also to give
each individual the opportunity to make his own future more secure. This means that individuals have a right to safe life and a right to liberty of action that fosters their preservation and comfort.

A right provides the agent who holds it with a warrant for taking or refusing to take an action or range of action that he conceives to be in his interest or otherwise to advantage him. Once accorded or otherwise obtained, what we call the administration of right is in large measure at the discretion of the person who holds it. It is for that person to decide whether, when, and how to exercise it, whether to alienate it, how vigorously to defend it, and so forth. A right in this sense can be thought of as consisting of five main elements, a right-holder (the subject of a right), which he or she might assert, or demand, or enjoy, or enforce (exercising a right), against some individual or group (the bearer of the correlative duty), citing in support of his or her claim some particular ground (the justification of rights).¹

The subject of right, the right holder, is most obviously and individual. But it might also be a group - a family, a tribe, a company, a state or even the globe itself in the case of the journalist's cry "the

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world has a right to know'. Recently, there have been arguments that not only animals, but also trees have rights, and that coasts, rocks and historic buildings might follow the pattern of rights. Though, this should not be a controversy of the present discussion, we may note the proliferation of agencies thought capable of bearing rights.

The object of a right is what it is a right to. This may be negative, 'a claim to a secured space in which subjects might pursue their own concerns without interference' or it may be positive, a claim that the space be filled with something. Either way, the object to be protected is an interest whose great importance is marked by the attachment of the label 'right'. This special importance of rights in a social system is conveyed by Ronald Dworkin's description of them as 'trumps', they outrank ordinary interests, and they override the utilitarian calculation of communal advantage.

Exercising a right, the activity that connects a subject to an object, takes several forms. There is, first, claiming that right exists in the sense of a claim as a call 'for the acceptability of something admittedly contestable'. Second, there is the same job done more


confidently: asserting or demanding a right. Third, there is claiming in the sense of cashing a right. Fourth, there is merely enjoying a right, a relaxed form of exercising. And, finally, there are the more energetic versions involved with enforcement: seeking protection against infractions, and demanding compensation for the damage done.

Since the middle of the 20th century, influenced by the terminology of the Universal Declaration, the term 'human rights' has tended to be used where earlier exponents of universal ethics such as Locke, Rousseau and the founding fathers of the US Constitution, spoke of 'natural rights'. But the terms are not synonymous; the change in adjective indicates a change in content; most exponents of 'human rights' in the mid and late 20th century are referring to a vastly wider range of rights for individuals than partisans of 'natural rights' had in mind in former centuries.

As rights have been broadly defined as claims which are supported by some objective standards or general theories, 'human rights' - to give full value to the adjective - should, strictly speaking, be defined as those claims made by men, for themselves or on behalf of

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other men, supported by some theory which concentrates on the humanity of man, on man as a human being, a member of human kind; which would be in essence an ethical theory. But just as the French Declaration of the Rights of man and the citizen was an amalgam of ethical and political doctrine of 18th century Europe, so, on a wider basis still, the many human rights proclaimed in the Universal Declaration of Human Rights relate to an amalgam of ethical doctrines, with rationistic and theological roots, and of various 20th Century political doctrines.6

The nature of Human Rights is often expressed by formulations that are common to all claim rights: that rights are entitlements or justified claims, or the moral property of individuals. However, the nature of human rights is more comprehensive and more specific. Such rights are personally oriented, normatively necessary moral requirements. The point of calling human rights personally oriented is to bring out that they are requirements that are owed to distinct subjects or individuals for good of those individuals. This feature distinguishes human rights from utilitarian and collectivist norms where rights, if upheld at all, are consequential upon or instrumental to the fulfillment of aggregative or collective goals. The point of saying

6. Ibid.
that the rights are normatively necessary is to indicate that compliance with them is morally mandatory. Such mandatoriness distinguishes the human rights from virtues and other goods whose moral status may be supererogatory, such as generosity or charity. Finally, in saying that the human rights are moral requirements, there are three distinct but related aspects of human rights: they are requirements, first, in the sense of necessary needs; second in the sense of justified entitlements; and third, in the sense of claims or demands made on or addressed to other persons. These three aspects involve the relations respectively between the Subjects and the Objects of the rights, between the objects and their Justifying Basis, and between the Subjects and their Respondents.  

These considerations have a direct bearing on one of the other conceptual questions about what it means for human rights to exist. The existence in question is not, in any straightforward way, empirical. Although Thomas Jefferson wrote that all humans "are endowed by their creator with certain inalienable rights", it is not the case that humans are born having rights in the sense in which they are born having legs. At least their having legs is empirically verifiable, but this

is not the case with their having moral rights. The having or existence of human rights consists in the first instance not in the having of certain physical or mental attributes, but rather in certain justified moral requirements. 8

Ideally, in the natural law approach, the state machinery would use its power to act within the guidelines of natural rights. The term 'natural law' includes a series of normative propositions, postulated as universal precepts of right and wrong: 'that no one ought to harm another in his life or health' "that men ought to be free and equal", are general normative propositions offered by various philosophers as precepts for legislators and governments. These precepts are not as such actual laws in any state or in international law; they are precepts for law. So it would have been more apt if the doctrine were labelled as 'natural right' rather than as 'natural law'. 9

The normative precept of natural right 'that no one ought to harm another in his life or health', yielded for Locke and his successors the particular propositions that every individual's human being had a natural right to life and to physical integrity are in accord with these general ethical norms. In the contexts of ethical or political arguments

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8. Ibid, p.3.

these are immediately understood as universal precepts for a moral system, for political system, i.e. first principles for legislators to turn into laws. Whether a particular political system or legal system does embody and implement these natural rights is a question of fact to be answered differently in different times and places. The doctrine of natural rights in effect argues that these percepts should be implemented in all societies at all times.

If there are human rights, they must be universal moral rights. They must be universal because they are the rights which people have simply as human beings irrespective of nationality, religion, citizenship, marital status, occupation, income or any other social or cultural characteristic, and also irrespective of sex. Such rights cannot merely be positive legal rights because people have them whether or not they have been enacted into positive law. They must therefore be moral rights. All this is implied by the term human rights, whether or not we are aware of it when we use that term. According to a famous theory which is called in English 'Natural Law', there can be such rights and such morality. But it is necessary to become entangled in the ramifications of that theory. Certain simple considerations point to an intelligible sense in which morality is universal and in which it includes certain rights. But universal morality together with the rights which it includes, turns out to be a more modest affair than 'Natural Law'
thinkers have commonly supposed. Then, there is an important corollary. The idea of human rights must not be made to carry more weight than it can bear. Not every thing that is wrong in social and political life is a violation of human rights.

If there is an intelligible sense in which morality is universal, it must somehow be reconciled with that diversity. Human Rights are rights as well as being human. Not withstanding the diversity of models, there is an intelligible sense in which morality is universal and that it includes certain rights, that is universal moral rights which are human rights in communities with widely different values and institutions. However, the idea of human rights in the UN declaration and in contemporary politics like all other influential ideas is in danger of degenerating into a slogan.

Morality has to do with conduct, especially in relation to other people. Morality is prior to laws in the sense that there can be morality without law but not law without morality. Law can create particular obligations but it cannot create the general obligation to obey law. A law prescribing obedience to law would be pointless. It presupposes the very thing it is intended to create; the general obligation to obey law. The obligation can only be moral in character. It follows that law can come into being only where morality is already a going concern. Aristotle distinguished between a 'government of laws', and a
'government of men'. But a government of law must be a government of men and, more especially, of honest men. If judges and other legal officials become corrupt, a government of laws will cease to be what it professes to be and will degenerate into a mere facade.

'Obligation' is a key concept in morality. To say of someone that he is under a moral obligation to do something is to say that he ought to do it whether he wants to or not. It may not be in his self interest but that makes no difference. Morality and self-interest are not the same although they can sometimes coincide. It may be in one's self interest to do what one has a moral obligation to do. Honesty is often the best policy. But one has a moral obligation to be honest whether or not it is in one's self-interest, without morality, there cannot be any such thing as human social life. People who are to live together must, for the most part at least, be able to trust one another. But trust presupposes the mutual acknowledgement of certain moral commitments; for instance, the obligations to be honest and to refrain from unprovoked violence. In the absence of morality, there could be no such commitments and hence no basis for trust. Everyone would distrust everyone else which means that all would be enemies. Such a condition of mutual human enmity was described by Thomas Hobbes in a memorable passage:

'In such a condition, there is no place for industry because the
fruit there of is uncertain and consequently no culture of the earth, nor navigation, use of the commodities that may be imported by sea. No commodious buildings, no instruments for moving and removing such things as requires much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society and, which is worst of all, the continual fear of violence and sudden death and the life of man solitary, poor, nasty, brutish and short".

There is, 'indeed, a sense in which the existence of human rights may be construed as consisting in certain positive institutional conditions. In this sense, human rights exist, or persons have human rights, when and in so far as there is social recognition and legal enforcement of all persons' equal entitlement to the object, i.e. the necessary goods of action. But this positivist interpretation of the existence of human rights is posterior to a normative moral interpretation, since the rights are in first instance justified moral requirements."

There have, of course, been philosophers, such as Bentham and


Marx, who on various grounds have denied the very possibility of constructing a moral justificatory argument for human rights. Hence, they have denied that human rights exist in the primary sense of such existence. Among the grounds they have given for this denial is the moral one that human rights are excessively individualistic or egoistic, so that their espousal leads, in Bethan's words, to overriding what is "conducive to the happiness of society" and in Marx's words, to separating man from the values of "community" and degrading the sphere in which man functions as a species being.\footnote{Ibid, p.4, quotes Jeremy Bentham on Rights and Karl Marx on the Jewish Question.}

1.2: The Universal Declaration:

As originally conceived, the purpose of the Universal Declaration of 1948 was to define the human rights and fundamental freedoms asserted in the United Nations charter and to place them before the world as a standard of achievement for all peoples and all nations. '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 the spirit of brotherhood'.\footnote{United Nations Universal Declaration of Human Rights, Article 1, 1948.} The opening words of the
Universal Declaration of Human Rights express a conception of man which underpins the whole framework of human rights embodied in the Universal Declaration and the two International Covenants of Human Rights.

The purpose of the International covenants was to translate the moral commitment of the Declaration into legally binding international obligations. The measures of implementation were designed to place those obligation under international supervision and to provide a remedy for breaches of the covenanted freedoms. Political and civil rights, which were regarded as enforceable by a state party to the covenants without any prior conditions, were kept separate from economic, social and cultural rights whose enjoyment was predicated on the existence of certain material conditions which time and effort would create. The presumption throughout has been that whatever philosophical and ideological differences existed among the nations, in no way affected their common understanding of the practical meaning of human rights and fundamental freedoms and of their moral and legal obligations.

The overwhelming endorsement and subsequent reaffirmation of the Universal Declaration by the United Nations General Assembly afford striking evidence of the extraordinary status and appeal of its principles and precepts, compelling Governments of all forms and
persuasions to publicly recognize their obligation to ensure that all persons within their jurisdiction are accorded the rights specified. It is a conception which, while it derives mostly from western political traditions, is in harmony with moral and social teachings to be found in many other traditions and patterns of belief.  

Nearly half a century is completing since the adoption of the United Nations Declaration of Human Rights. Yet gross and widespread violation of even the most elementary rights continues in states which are themselves party to the same Conventions and Declarations. Why should this be so? In one sense it is not surprising since there is no way in which an International body like the United Nations, based on the principles of 'the domestic jurisdiction of any state', could require a member state to implement even those human rights obligations which it had voluntarily assumed.  

Human rights implementation is, and must remain for the foreseeable future, a matter essentially within the domestic jurisdiction of individual states. What has to be considered, therefore, is why states fail to provide domestic remedies for human rights infringements or failures.

In many parts of our world, particularly in the underdeveloped countries, the cardinal problem of priorities is as between basic economic rights and the libertarian and political and juristic rights. In starker terms, abandoning the language of rights, the crucial question in many parts of the Third World is - which should be the overriding objective of governments? the provision of a minimum of food and shelter for the vast majority of its citizens, or the protection of the liberty of individuals, the democratic process and the rule of law? Put more harshly still, as it has been several years ago, for many millions in the present world do not human rights only begin after breakfast?\(^{16}\)

The most far-reaching divergence latent in the Universal Declaration reflects a fundamental antimony in modern political philosophy: the values of liberty and equality, proclaimed as companions in the 17-18th century political philosophy of Locke and Rousseau, turn out in modern political and juristic theory in practice to be major rivals\(^ {17}\)


\(^{17}\) Ibid, p.14, quotes the papers of the World Congress on Philosophy of Law and Social philosophy, held at St. Louis, USA, August 1975.
1.3 : The Gandhian Vision :

It is against this background that Gandhian concepts appear to resolve the issue of human rights in contemporary world politics. Gandhi was pragmatic enough to realize that attainment of human freedom was beset with many problems. "Life is not one straight road. There are so many complexities in it. It is not like a train which once started, keeps on running." In Gandhi's view, from the down of civilization, the rights of man have been a refuge against arbitrary use or determined depredation by the human right, a rallying cry of resistance to tyranny and oppression. With the passage of time, these rights gained recognition in a systematic way in different forms in various parts of the world, these rights found expression in a number of declarations and institutional frameworks. Important contributions made so far, however, lack conceptual totality of human rights and are mainly western.

The Gandhian thought has a dynamic concept of human rights, universal in its approach, comprehensive in its content and reaffirming the principle that man is the measure of the Universe.

It includes a set of economic rights, right of people to self...

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determination and right of stateless persons and refugees. In Gandhi, however, what is, of great significance is the identification of goals and the setting up of norms for universal application. "All humanity is one undivided and indivisible family and each one of us is responsible for the misdeeds of all the others". 19 The norms and standards identified by Gandhi are based on the fundamental principle that the respect for individual human dignity is derived from universally accepted values and therefore abuses of human rights are a legitimate subject for international concern.

Gandhi was socked by the massive assult caused by the World Wars and he had doubts in establishment of peace through force. In his view the realization of international peace through a world organization is bound to fail so long as the only sanction that it wields is that of armed forces. Only a world organization backed by a moral and nonviolent sanction can guarantee international peace. "It has always seemed to me", Gandhi remarked referring to the League of nations at Geneva in 1931, "that the League lacks the necessary sanctions. I venture to suggest you that the means we have adopted in India supply

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the necessary sanction to a body like the League of nations".\textsuperscript{20} Gandhi's conception of a World government was that in it "all the states of the world are free and equal, no state has its military; all will be disarmed".\textsuperscript{21} As a reality he was prepared to concede that "there might be a world police in the absence of universal belief in nonviolence. But this force would be a concession to human weakness, not an emblem of peace, and would function more as a peace brigade than a modern fighting force.\textsuperscript{22}

In the context of human rights, Gandhi also took note of the social environments and relationship that exists between a person and the institution on which person's social existence depends. For gandhi, preceding the concept of human rights, there is one core concept of right to live as a human being. This core aspect of gandhian thought is more like relevant for the Third World countries where problems like poverty, malnutrition and disease jointly make the concept of human rights meaningless. This in turn demands the presence of basic conditions essential for the protection of human dignity which nature has bestowed

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on each human being. From this primordial right to life spring all other rights - the right to liberty and security and the right to freedom of movement and expression and so on.

Apparently, the Gandhian perception can be broadly helpful in giving a totality to the human rights concepts. In the light of this hypothesis we shall be reviewing the various approaches so far made to human rights. We are sure that the Gandhian perspective will give a more significant place to human rights both historically as well as philosophically. Before reaching the conclusion, therefore, let us start evaluating one after another.