CHAPTER THREE

OVERVIEW OF THE HISTORICAL EVOLUTION OF HUMAN RIGHTS

IN THE ANCIENT AND THE MEDIEVAL INDIA

3.1 Introductory

The term ‘Human Rights’ is comparatively of recent origin, however, the idea of human rights is as old as the history of human civilization. Introducing the concept of Human Rights, a British historian Maurice Cranston\(^1\) says “Human Rights is a twentieth century name for what has been traditionally known as natural rights or, in a more exhilarating phrase, the rights of man.”\(^2\) These ‘Rights of Man’ had a place in almost all the ancient civilizations of the world. All societies and cultures have in the past developed some conception of rights and principles that should be respected and some of these rights and principles have been considered universal in nature.\(^3\) Similarly, the philosophy of human rights in India has come a long weary way, yet the progress through the historical path has always remained gradual and

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never lost its link with the past. In the recorded history and ancient scriptures, there have been references on the basic human rights, though they were not referred to by that name.\textsuperscript{4}

The Indian history is warranted by the fact that human rights jurisprudence has always occupied a place of prime importance in India’s rich legacy of historical tradition and culture. This is evident in the prevalence of different cultures, traditions and faiths in India. It is claimed that what the West has discovered today in the field of human rights has been an accepted principle in India since times immemorial. The concept of human rights in India may be seen to have existed in the crystallization of values that are the common heritage of mankind. As Mary Ann Glendon points out, “the Universal Declaration of Human Rights did not suddenly drop from heaven engraved on tablets but rather was a milestone on a path on which humanity had already been travelling for centuries”.\textsuperscript{5}

The main focus of this chapter is to trace the roots of human rights in the Ancient and the Medieval India. It also aims at demonstrating the great human rights values that are implicit in the Indian culture since times immemorial. Along with that, it endeavors to make a modest attempt to reveal that the concept of rights is neither a gift from the West nor a typical Western monopoly of wisdom; its origins are very much rooted in the ancient Indian civilization.

\subsection*{3.2 Idea of Human Rights in the Ancient India}

It is claimed that what the West has discovered today in the field of human rights has been an accepted principle in India since times immemorial which is evidenced by the declarations made in the \textit{Vedas}.\textsuperscript{6} The \textit{Vedas} constitute the foundations of the wisdom and culture of India and they have been on the forefront in espousing the cause of humanity. The Vedic society viewed peace and prosperity as true aims of life. All the Vedic prayers were made and \textit{Yajnas


were performed with such objective. As already mentioned human rights were not documented in writing in the Vedic era. They were intrinsic part of the social make up. In this context, a typical hymn of *Rigveda*⁷ says: “O Indra of mighty fame; Please save us from destruction. May Pusha who knows all and who feeds all grant us happiness; May Taksha with his unbreakable unfailing weapon grant us well being.”⁸

The Vedic man also prayed for friendship and amity for all human beings. The hymn of *Yajurveda*⁹ says: “May all creatures see me as a friend and may I too see them all as friends”¹⁰

The *Vedic* provisions forcefully declare equality amongst all human beings. For example, *Rigveda* refers to the three civil liberties of *tana* (body), *skridhi* (dwelling house) and *jibasi* (life). Long before Hobbes, an eminent political thinker, the Indian epic *Mahabharata* described the civil liberty of the individual in a political state. *Rishis*, law researchers and jurists like *Brahaspati, Ved Vyas, Bhrigu, Parasar, Shukracharya, Manu, Kautilya*, etc., thousands of years ago postulated and expounded universal theory of law and justice concerning life and society more rationally, humanely and objectively than most of the

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⁹ The *Yajurveda* derived from the roots *yaj*, to sacrifice or worship is the knowledge of sacrifice or sacrificial texts and formulas as distinguished from the *Rigveda* or knowledge of the recited praise, the *Samveda* or knowledge of chanted hymns and the *Atharva* or *Brahmaveda* which is the knowledge of prayers, charms and spells. For more details, see: Ralph T.H. Griffith (2008): *The Texts of the White Yajurveda*, New York: Forgotten Books, p. 1.

modern western legal thinkers and today who are still confounded by the cobwebs of law-morality relationship.  

The concept of human rights in India may be seen to have existed in the crystallization of values that are considered to be the common heritage of mankind. Moreover, human rights gain meaning only if there is independent judiciary to enforce rights. The *dharmasastras* clearly mentions:

The independence of judiciary was one of the outstanding features of the Hindu judicial system. Even during the days of the Hindu monarchy, the administration of justice always remained separate from the executive. It was the Hindu judicial system that first realized and recognized the importance of separation of the judiciary from the executive, and gave this fundamental principle a practical shape and form. The case of *Anathapindika v Jeta*, reported in the *Vinaya-Pitaka*, is a shining illustration of this principle. Law in Hindu jurisprudence was above the sovereign. It was the *Dharma*. The laws were then not regarded as much as a product of supreme parliaments and legislatures as at present. Certain laws were regarded as above all human authority. Such, for instance, were the natural laws, which no Parliament, however supreme, could abolish. Technically speaking, a supreme parliament may proclaim a law abolishing the law of gravitation, but it will not, in fact, be abolished by the Parliament's fiat.

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12 In this case a prince and a private citizen submitted their case to the law-court, and the court decided against the prince. The prince accepted such a decision as a matter of course and as binding on him.


3.2.1 Dharma and Human Rights

India is an ancient land with an ancient surviving civilization whose antiquity is not shared by any other civilization except the Chinese.\(^{15}\) The ancient Indian legal philosophers were universalists, humanists, rationalists and, above all, moralists who evolved a system of legal theory which was based on higher values and ideals, that is, on their conception of dharma, which governed in an integrative manner all civil, religious and other actions of men in society, be it a king or his subjects.\(^{16}\) The concept of *dharma* which has always governed the Indian society is much more comprehensive than the modern concept of human rights. Unlike modern theories which stresses only on the rights of the individuals, this concept dealt with both rights as well as duties. The emphasis was laid upon the duties of every individual, be it a king or a common man and the performance of duties by every person was the way to ensure enjoyment of rights by every individual.\(^{17}\)

As far as king was concerned, it was his duty to uphold the law and he was as much subject to law as any other person. Equality before law and equal protection of law can be deduced from that practice. One of his chief duties was the administration of justice according to the laws of the religious texts, local customs and usages and written codes. It was obligatory for him to enforce not only the sacred laws of the existing texts but also the rights and claims of the subjects. This was possibly the human rights enforcement situation was in its embryonic stage. The guiding principles laid down for the kings were, however, taken mainly from the species of *dharmic* texts like the *Vedas* and the *Vedanta* under the genus *Sanatan Dharma* which enshrines “Truth is One” and “God resides in every human being”.\(^{18}\) Every aspect was regulated by *Dharma* which formed the basis of our ancient human rights jurisprudence.\(^{19}\) Not only that, in *Yajnavalkya Smriti* it is clearly laid down that any punishment given by the king contrary to the laws of dharma would result in his destruction whereas punishment


\(^{17}\) Gurjeet Singh and Dinesh Kumar (2005), pp. 25-44, at p. 29.


meted out in accordance with *Dharma shastras* would entitle him to a place in heaven. In addition to this the maxim that, “All wrongs are attributable to the king” which stands in sharp contrast to the western theory “The King can do no wrong”.

The laws of *Dharma* threatened the unworthy king. *Dharmasutras* teaches morality and lays down duties of the individual and regards deviation from them as sin. Human Rights in the form of ‘dharma’ can also be traced in the *Arthashastra of Kautilya* and in the ‘Manusmriti’ of Manu, which laid down legal jurisprudence in the ancient India. *Dharma* is a very comprehensive and almost all pervasive term in the history of the Indian thought. It embraces and touches upon almost all aspects of human life. It is an adhesive and a cementing catalytic agent which holds mankind individually and socially intact. It regulates the rights and duties of every individual in order to ensure peace and happiness for all, by harmonizing the interests of the individuals and of the entire society. Human Rights and

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20 *Dharma shastras* is the “science of dharma” and is a set of texts which teach the eternal immutable dharma found in Vedas. The *Dharma shastras* expanded and remodeled in verse, form the *Dharma sutras* consisting of instructions on human conduct, morals and ethics. The *Dharma shastras* are a Hindu text of versified instruction on morals and law and prescribe rules for the society so that each person might live according to *dharma*. For more details, see: Subodh Kumar (ed.)(2002): *The Indian Encyclopedia*, Vol. I, New Delhi: Cosmo Publications, pp. 1930-31.


23 The *Arthashastra* was compiled by Kautilya or Chanakya in around fourth century B.C. He was the Prime Minister of Chandragupta Maurya and advised him on the financial matters of the state. Detailed rules relating to civil rights, duties, wrongs, criminal law, procedure which made these later to customary practices, are dealt with in great detail and in their manifold aspects in this work. For more details, see: Wakidur Rehman et. al. (2005): *Historical Development of Legal Literature on Customary Laws in Assam: A Critical Study*, New Delhi: Kalpaz Publications, p. 109 and R.P. Kangle (1986), Part III.


26 Ram Dev Bhardwaj (June 2006), p. 98.

mutual obligations among the individuals, power of the state and its limitations were, therefore, not alien to the dynamic concept of Dharma and had its rich core in its content.\textsuperscript{28}

Besides Vedas, Upnishads, Mahabharta and Bhagwat Gita also furnished philosophical foundations for subsequent social developments, thereby enriching the doctrine of human rights. Upnishads, emphasizing the individual self and its truth say that “there is nothing higher than the person”. The Upnishadic legal experts started with pure philosophy and enunciated the principle that truth is one reality and law and order are its different phases. Mahabharta also emphasizes the point that “without ethical and moral principles, there is no true happiness and a society cannot hold together; the principles such as truth, self-control, asceticism, generosity, non-violence, constancy in virtue should serve as the means of one’s success”.\textsuperscript{29} Bhagwat Gita\textsuperscript{30} being a part of Mahabharta preaches us to meet the obligations and duties of life, always keeping in view the spiritual background of human existence which is the manifestation of an ultimate and the infinite. It is evident that the subsequent scriptures emphasizing on the individual, and the guiding principles of his success, form the base from which the essence of the modern conception of human rights can be deduced.

3.2.2 Religion and Human Rights

The most prominent religions in the Ancient India were Hinduism, Buddhism and Jainism. All the three have stressed upon various important aspects of human rights. Although the religious traditions tend to focus on individual duties, prohibitions, and responsibilities, they have been reinterpreted in modern times to have laid a foundation for the development of human rights.\textsuperscript{31} Many Scholars have often denied the applicability of human rights to Hinduism, which was the most prominent religion in ancient India, other than Buddhism and

\textsuperscript{28} ibid., p. xxiii.


Jainism, because of its prevailing social hierarchy preference for groups over individuals and emphasis on duty. However, the following arguments could be made for the idea that human rights have been known to Hindus.\textsuperscript{32}

3.2.2.1 Hinduism and the Idea of Human Rights

In the first place, the idea of autonomy, on which the concept of human rights is usually based, is at the heart of the law of \textit{karma} (‘as you sow, so shall you reap’), which is a recognition by Hindus, of the human capacity for self-determination and the idea that justice is impartial. Just as the theory of autonomy acknowledges self-determination as a universal human capacity rather than a property of action because acts can always be coerced for good or bad reasons, so too does the law of \textit{karma}. Just as individuals are the ultimate source of value for human rights, so too are they according to the law of \textit{karma}. It is only in human form that one can seek liberation, after all, and liberation is defined as realization of the true self (atman), which is within all. And just as autonomy needs agency (self-consciousness, desire, intention and action), so does the law of \textit{karma}.

Secondly, Hinduism acknowledges that ‘the general rule, in the absence of express provision to the contrary, is equal distribution (\textit{samam syad-asrutitvat}).

Thirdly, Hinduism acknowledges that there are universal human values (\textit{sammanya-dharma}), such as non-violence, truthfulness, non-stealing, celibacy, renunciation of possession and self-control. Its first rule, for instance, is the negative right of non-injury / non-killing (ahimsa). Its second rule, truthfulness, has been linked with justice and human rights following \textit{Brhadaranyaka Upanisad} 1.2.14, which says that righteousness / justice (\textit{dharma}) is truth (\textit{satyam}).

Like those advocates of human rights who argue that rights are of practical importance primarily because of the duties they imply, which presupposes the correlativity between rights and duties, so too Hinduism accepts this correlativity but generally approaches it from the side of duties. Parents have a duty, for instance, to marry off their children in order of

age; the correlative, though implicit idea is that all people have a right to marry. Even with its emphasis on duties, which have imposed constraints that might seem onerous from today’s standards, Hinduism has always provided exceptions. Self-defence, for instance, is an exception of the negative right of non-injury.

Samnyasa (renunciation to pursue spiritual goals though radical autonomy) is an exception to the norm of life within society, regulated by duties and rights based on family and caste. Reform is an exception to the religiously prescribed norms. Moreover, if unrighteousness prevails, Hinduism, for instance, allows revolution against an unrighteous king who makes the people hate him. Although admitting that rights and duties are correlative and even interchangeable, Arvind Sharma argues that the language of rights, which has antecedents in Hinduism, is preferable today to duties, because the idiom of duties has not been balanced in the Indian history with rights and state protection of individual freedom. However, the post-Vedic period witnessed the fast decline of human rights and values.

3.2.2 Buddhism and the Idea of Human Rights

The rise of Buddhism and Jainism were clear indication of the decline of moral order as against the rights of privileged class. While Buddhism proclaimed for equality in all fields, Ashoka, the Great took it further in implementing such rights in his empire. The entire religious and social climate of the North India during and after the rise of Buddhism and other allied religious systems had generally been one of reaction against limitations imposed on human rights by the then prevalent Brahmanical value system. The activities of the Buddha and his early disciples in this context had been directed towards the acceptance and practice of the principles of human rights in a very practical way, not only as a desirable effort at social re-structuring, but also in recognition of its ultimate spiritual value.

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33 ibid., p. 255.
34 ibid., p. 256.
35 O.P Chauhan and Lalit Dadwal (2004), p. 27.
religion and philosophy dealing with the welfare of “all beings” Buddhism is certainly concerned with human rights and with much more. Its concern for human rights finds expression through the value system it upholds and considers salutary for mankind. Though not expressed as in the present day parlance, a careful student of Buddhism would not fail to note that the concepts and concerns of the Universal Declaration of Human Rights as adopted by the General Assembly of the United Nations on 10 December 1948 are enshrined in the teachings of the Buddha as well. The basic principles of the Declaration are fully supported and reinforced by the Buddhist Canonical and historical literature.37

Buddhism takes into full account the interrelationship among the deeds and actions of all individuals, classes and nations, all of which are bound to be mutually affected. Besides, Buddha preached belief unto oneself, to be torch bearer unto oneself by taking recourse to the righteousness: \textit{Attadip\=a Vihar\=atha}. The study of ‘Mudra-Rakshasa’ reveals that the dispensation of justice was considered as one of the important duties of the rulers. Vaisakha Dutta in his ‘\textit{Mudra-Rakshasa}’ has depicted \textit{Chandragupta} as a deity coming right from heaven to save his countrymen.38

The realization of the Four Noble Truths39 and the practice of the Eightfold or the Middle Path40 prescribed by Buddha can lead one to salvation through enlightenment. Buddhism thus infused a new spirit in the dormant masses, and it conferred two priceless benefits on its adherents: (i) it freed them from the bondage of castes and (ii) it taught them that life is not without hope. It brought a new vision of humanity with the message of love, equality and tolerance. The Buddha’s concept of \textit{Dhamma} is to be appreciated not merely for its ethical

37 \textit{ibid.}, p. 180.


39 Gautama Buddha proved to be a practical reformer who took note of the realities of the day. He said that the world is full of sorrows and the people suffer on account of desires. If desires are conquered, nirvana will be attained, that is, a man will be free from the cycles of birth and death. For more details see: A.L. Basham (1998): \textit{The Wonder That Was India}, New Delhi: Rupa & Co., p. 269.

40 Gautama Buddha recommended an eight-fold path, also known as the \textit{Ashtangika Marga} for the elimination of human misery. It comprised right observation, right determination, right speech, right action, right livelihood, right exercise, right memory and right meditation. He taught that a person should avoid the excess of luxury and austerity. For more details see: A.L. Basham (1998), p. 269.
value but also for its tremendous social relevance. It showed the way for the achievement of social justice and human rights to the downtrodden.\footnote{J.V. Naik (2007): \textit{Inaugral Address to the 67th Session of the Indian History Congress}, New \textit{Proceedings of the Indian History Congress}, Delhi: Delhi University, p. 12.}

At the metaphysical level both Hindu and Buddhist thought are primarily concerned with the ultimate destiny of man - a transcendent, spiritual state where the soul finds salvation or the individual consciousness attains extinction.\footnote{Romila Thapar (1978): \textit{Ancient Indian Social History: Some Interpretations}, Hyderabad: Orient Longman, p. 27.} However, a perusal of the social and legal literature suggests that the metaphysical attitude was an ideal to which many have aspired but very few achieved. Metaphysical values apart, it must be remembered that the Hindu and the Buddhist tradition arose out of two disparate socio-economic backgrounds: a fact which is reflected in their differing attitude to human rights. Hindu law\footnote{Hindu Law has been codified in the \textit{Dharma-sastra} literature, frequently referred to as Law Books. Of these the most significant for our purposes are the \textit{Dharma-Sastras of Manu}, \textit{Yajnavalkya} and \textit{Narada}. The Buddhist concept on law were never codified in any single source. Legal ideals are, however, found in the Buddhist canon, particularly in the \textit{Vinaya-Pitaka}.} was first formulated in a tribal society and it was based largely on customary practices and relationships. The central problem at this stage was to maintain peace between the tribes rather than to protect the rights of the individual.

The Buddhist tradition originated at a time when tribal loyalty was changing into territorial loyalty and there was a sharper awareness of political organization. Absence of monarchical authoritarianism and close association with the idea of divinity in the political sphere both led to stress on the rights of the individual in society. In the Buddhist theory the emphasis is on the Quasi-contractual nature of the beginnings of government and on the sovereignty of the people.\footnote{\textit{ibid.}, p. 28.}

3.2.2.2.1 Ashoka: The Great Mauryan King and the Idea of Human Rights

In the mid-third century B.C.E., some two hundred years after the death of the Buddha, his teachings were adopted by King Ashoka, who ruled over the greater part of India, in an area
spreading from Afghanistan to Madras. In Buddhism, he found useful guidelines for implementing justice throughout his kingdom. Believing that there was no “greater task than to survive for universal welfare, he promoted toleration of religious ideas and said, “All sects receive honour from me, and I deem the essential point is fidelity to their doctrines and their practices.” His twenty-eight year rule, after initial wars, was mainly dedicated to instituting peace and harmony. Missionary yet tolerant in its scope, Buddhism became, under his control, a vehicle for conversion by persuasion rather than force.\footnote{Micheline R. Ishay (2008), p. 30. Also see: A.L. Basham (1998) and Vincent A. Smith (1964): \textit{Ashoka}, Delhi: S. Chand and Co., pp. 170-71.}

Ashoka’s explanation of what he meant by the \textit{Dhamma} indicates that it was a secular teaching.\footnote{His formulations of dhamma were intended to influence the conduct of categories of people in relation to each other, especially where they involved unequal relationships. For more details, see: Romila Thapar (2010), p. 3.} Emphasis was given to respecting elders. The plea to be liberal and charitable towards friends, acquaintances, and followers of religious orders, might be addressed to any community that prides itself in having a developed sense of social ethics. The request to abstain from killing animals is again a humane plea which has been heard through the centuries in many cultures.\footnote{Romila Thapar (1997): \textit{Ashoka and the Decline of the Mauryas}, New Delhi: Oxford University Press, p. 163.}

Ashoka showed respect and consideration for all existing faiths. He proclaimed in an edict, “All sects deserve reverence for one reason or the other. By this acting a man exults his own faith and at the same time does service for the sects of other people”. Ashoka sincerely attempted to incorporate the principles of Buddhism in the \textit{Mauryan} statecraft with the view to promote spiritual and material welfare of his people whom he regarded as his children. This is evident from his numerous celebrated edicts which provide a deep insight into the mind and heart of that noble king who deserved to be venerated as the first and the foremost rationalist ruler-reformer of India.\footnote{J.V. Naik, \textit{Inaugral Address at the 67\textsuperscript{th} Session of the Indian History Congress}, p. 12.} His edicts are considered to be the most meaningful historical documents which reflect a familiarity with both the Hindu and the Buddhist traditions.\footnote{Romila Thapar (1997), p. 251-66.} The edicts are meaningful in the present context since they are the attempts of the
ruler at solving the problems of the human being in a complex society. The norms of conduct suggested by the emperor carries a deep conviction of faith in humanity.

Within the existing framework of social and economic relations, Ashoka makes a powerful plea for social responsibility, for dignity and justice in the behavior of one man towards another, for tolerance and kindness in human relationships and for non-violence. Although monarchy predominated in the ancient Indian polity, the references to republics are also found in the literary traditions. Since Alexander the great’s invasion on India in 327-324 B.C we come across references from Greek and Roman account of India, to many states governed by oligarchies. Later on the Buddhist Pali cannon tells us about the existence of many republics, mainly in the foothills of the Himalayas and in North Bihar. Various accounts of the sixth and fifth century B.C. suggest the existence of number of janpads and also the growth of towns and cities in India. From Panini’s account (fifth century B.C), we find rules concerning the voting in monastic assemblies their memberships and their quorums.

3.2.2.3 Jainism and the Idea of Human Rights

Jainism is one of the most ancient animistic indigenous religions in the field of history. Its philosophy, ethics, dogmas, spiritual disciplines and practices are based on scientific truth and non-violence with the nature of humanistic approach, inter religious dialogue and understanding which can be easily perceived through its extensive and perennial literature. Its philosophy, various ideas and tenets, rules of behavior and belief system are all tuned with the modern principles of human rights. They were expounded much before the proclamation of human rights by the United Nations. Probably no other religion has so forcefully professed for the maintenance of environment through its doctrine of Ahimsa. Better education, better service to children, better humanitarian dealing with servants, women, downtrodden communities, poor communities, animals and all other souls should be made available on humane background. There is no recognition and permission for keeping bonded labour in Jainism.

50 Romila Thapar (1978), pp. 33-34.
53 ibid., p. 253.
Jainism advocated for protection of forest, water, air etc. Ecological imbalance is considered as a serious threat to the life of human beings and, therefore, the Supreme Court, in present times, considered a right to a pollution free environment as an integral part of Article 21 of the Constitution. The mining operations are also included into the act. Jainism might have understood the disturbance of ecology and pollution and affection of air, water and environment by reason of mining operations and therefore, prevented the householder for engaging the mining business and also such industries which involve any kind of violence and pollution. Deforestation which affects the climate and cause global warming is also highly objectionable.  

### 3.2.3 Developments During the Post-Mauryan Period

In the period commencing from 200 B.C., the Mauryan rule in the eastern and central India and in the Deccan was supplanted by a number of dynasties, notable among them being the Sungas, the Kanvas and the Satvahanas. All of them were natives of India but none of them was in a position to build up an empire as vast as that of the Mauryas. In the north-western part of the Mauryan empire we find that the Mauryan rule was replaced by number of ruling dynasties from central Asia which paved the way for the establishment of intimate and widespread contacts between India and Central Asia. The important ruling dynasties were the Greeks (*Yavanas*), the Partians (*Pahlavas*), the Sakas (*Scythians*) and the Yueh-Chis (*Kushanas*).

Infiltration of a large number of foreign races into the ancient society was a significant feature of the social life of that period. The foreign invaders had to make many adjustments to fit themselves into the Indian society. Some of them were highly cultured and had something to offer us, while others like the Sakas were barbaric and had to undergo a difficult process of acclimatization.

On the other hand there was decline in the position of women. Early marriages deprived the women of the fruits of learning and education. Marriage of widow or divorce, save some exceptional circumstances, was not permitted. Although Manu praises women as the

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54 *ibid.*, p. 252.
ornament of the house and a partner in husband’s duty of a Dharma, he describes her as ever
dependent on others, on parents before marriage, on husband after marriage and the children
after widowhood.55

In another text Tiru-Kural written by Tiruvalluvar56 during the Second century A.D various
facets of life and important ideas related to polity have been mentioned. It discussed about
adequate army, industrious people, ample food and resources, alliance with foreign powers,
responsibilities of the ministers, qualities and duties of the king, diplomacy etc. All these
points mentioned in the text refer to the fact that democratic values, rights and public opinion
were very much respected in the Indian society.

3.2.4 The Gupta Age and the Human Rights Scenario

After the fall of the Kushanas in the north and the Satvahanas in the Deccan there was no
great political power for nearly a century. There were however small powers in the northern
India. Some of them were republics and others were monarchies. Among the kingdoms were
those of the Nagas, Vakatakas, Maukharis and Guptas. Among republican states were the
Lichchhavis, the Yaudheyas, the Malavas, etc. They were engaged in mutual struggles until
the Guptas emerged as the strong state around 300 A.D. Chandra Gupta I ascended the throne
in 320 A.D., which is also taken as the commencement of the Gupta era (319-320 A.D.).57
Later on, it was only Chandragupta II (Vikramadiya) who defeated the foreigners and united
India under one sovereignty.

Banarsidass, pp. 379-80.

56 Tiru-kural or kural of Tiruvalluvar is the best of the minor didactic poems and its teachings have been
described as an eternal inspiration and guide to the Tamilians. The text is divided into three parts
dealing with the Trivarga or well known three objectives of life viz. dharma, artha, and kama,
devoting ten stanzas to each of the 133 topic bearing upon different aspects of human life. For more

Hiuen Tsang, a Chinese traveler was of the opinion that the administration in the Chandragupta period was founded on benign principles.\(^{58}\) There was no forced labour, crimes were rare and the king personally supervised the whole administration. The position of the *shudras* improved in this period. They were now permitted to listen to the *Ramayana*, the *Mahabhatta* and the *Puranas*. They could also worship a new god called Krishna. They were also allowed to perform certain domestic rites which naturally brought fee to the priests. All this can be attributed to the change in the economic status of the *Shudras*.

From the seventh century onwards they were mainly represented as agriculturists; in the earlier period they always appeared as servants, slaves and agricultural labourers working for the three higher *varnas*. Similarly, the women were also allowed to listen to the religious texts. The women of higher orders did not have access to independent sources of livelihood in pre-Gupta and Gupta times. The fact that the women of the two lower *varnas* were free to earn their livelihood gave them considerable freedom which was denied to the women of the upper castes.\(^{59}\) It was argued that the *vaishyas* and *shudra* women take to agricultural operations and domestic services and hence they were outside the control of their husbands. In contrast, by Gupta times members of the higher orders came to acquire more and more land which made them more polygamous and more property minded. In a patriarchal set up they began to treat women as items of property, so much so that a woman was expected to follow her husband to the next world. The first example of the immolation of the widow after the death of her husband appears in Gupta times in 510 A.D. However some post-Gupta law books held that a woman can remarry if her husband is dead, destroyed, impotent, has become a renounecer or has been excommunicated. The main reason for the subordination of the women belonging to the upper *varnas* was their complete dependence on men for their livelihood. They lacked proprietary rights. However, the oldest *Smritis* state that the gifts of jewelry, ornaments and similar other presents made to the bride on the occasion of her marriage were considered her property. Gupta and post-Gupta law books substantially enlarged the scope of these gifts. According to them, presents received by the bride not only from her parents’ side but also from the side of her parents-in-law at marriage times and on other occasions formed the *stridhana*. Katyayana, a law-giver of the sixth century holds that


she could sell and mortgage her immovable property along with her *stridhana*. This clearly implies that women received share in landed property according to this law giver, but generally a daughter was not allowed to inherit landed property in the patriarchal communities of India.\(^{60}\)

When the Gupta empire fell and the Huns followed, there was more dabbing and philosophy. The Vedic *Brahmavidya* with its highly pragmatic contents was attenuated into systems of philosophy mazed in logic and words without the sap of life. Dharma losing its vital elasticity became a chain of bondage eternal and immutable *Sanatana*. Hence the entire Indian concept came from the Indian philosophy that has a distinctive character of its own, originated in the speculation of Vedic sages and reached its final fruition in the *Advaita Vedanta* of Sankracharya and his followers.\(^{61}\)

The last emperor of the ancient India who ensured Dharma for the subject was emperor Harsha Vardhan. He ensured that men of merit and ability were patronized irrespective of their castes, colour or creed.\(^{62}\) After Harsha Vardhan, the society in India by large, lost its sight, as far as human rights were concerned and became a major destination of all kinds of foreign conquests. The last period of ancient India was a period of decay. There was no strengthening of the empires and political feuds had taken great stronghold which erupted greatly in the cultural evolution of the country.\(^{63}\)

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\(^{61}\) Sankracharya was one of the greatest Hindu philosopher of the Post-Gupta period. He was an ardent vedantist and the most powerful exponent of the doctrine of pure Monism (advaita) which he elucidated in his commentaries on the classical *Upnishads, the Bhagwad Gita* and the *Brahma Sutras of Bhadarayana*. He spearheaded the movement which aimed at cleansing *vedic* philosophy of its obscurities and inconsistencies and thereby making it intelligible and acceptable to common man in the face of stiff challenge not only from the heterodox sects but also from popular devotional cult.


3.2.5 Rights and Duties in the Ancient India

Critics have pointed out that all ancient traditions speak of duties and hardly of rights. At the same time it has been accepted that it is the duties which have given birth to rights. A person cannot enjoy one’s rights if one is not performing one’s duties towards others. It is also a simple fact that every society lives on the contribution of its members. Therefore, to emphasize rights unilaterally and to ignore duties would put in jeopardy the network of social relations in a given community.

It is, therefore, important to mention that unlike modern theories which stresses upon the rights of the individual, the concept of dharma in ancient India dealt with both rights and duties. The emphasis was laid upon the duties of every individual, be it king or a common man and the performance of duties by every person was the way to ensure enjoyment of rights by every individual. Moreover, as far as Hindu tradition was concerned, freedom lied in belonging to a group because the group could claim rights, as for example the rights of the caste, the rights of the family, the rights of the guild, etc.; the individual as an individual had no identity in a societal sense. At the same time the high value placed on tolerance in Indian thought was not just a pious wish, since, given this social structure, a little bit of tolerance could go a long way in preserving social harmony; more so perhaps than in other societies. In allowing these concessions in the working of society, the legal and social iniquities of the caste structure and the implications of the Hindu code were somewhat modified. This would also largely explain the striking absence of fanaticism in the Hindu tradition.

It is an acceptable fact that it is through history that we realize the value of human rights or in other words we can say that the recognition of human rights today is due to the teachings of history and historical events to the society and individual. For example, kautilya has envisaged a penal code, principles of natural justice, human rights and human dignity

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64 Mahendra P. Singh (2003), p. 163.
68 ibid., p. 37.
thousands of years ago. These concepts, rights and penal provisions now find place in our constitution and penal statutes in a refined manner.\textsuperscript{70}

The Ancient Indian literature as a whole, from \textit{Rig Veda} onwards, yields much information and is extremely valuable. However as pointed out by the critics, the texts do not always discuss wholly impossible utopias; their advice is often pedantic, but usually more or less feasible. It is not likely that any king conducted his affairs wholly on textbook lines, and there is ample evidence that the recommendations of the experts were not always put into effect. One must keep in mind that that in the texts on statecraft and Sacred Law the authors described things not as they really were in fact, but as they believed they ought to be. Probably in no kingdom of ancient India, not even in that of Mauryas, was the influence of the state quite so all-pervading as in the system envisaged by the \textit{Arthasastra}, though its author evidently based his percept upon current practice. Similarly the vicious punishments laid down by Manu for religious crimes (for example, a \textit{sudra} who “arrogantly teaches \textit{brahmans} their duty” shall have boiling oil poured in his mouth and ears) are the suggestions of a fanatic and were rarely if ever put into practice. Moreover the texts are permeated with pedantry, and show passion for sterile classification to which the Indian \textit{pandits} had often been prone. Many errors had been made by historians through their uncritical acceptance of these political texts as giving an exact picture of things as they were.\textsuperscript{71}

Inspite of everything, one cannot possibly ignore the violation of human rights in ancient India which mainly stemmed from the then social stratification.\textsuperscript{72} The Brahmins, due to their hegemony over the caste-system denied the rights to the lower caste, the untouchables, and other deprived sections of the society, so there was violation of their rights and dignity. According to the Law Books, judicial punishments were required to take into consideration the caste of the offender. Rights were extended primarily to the privileged upper castes.\textsuperscript{73}


\textsuperscript{72}Social life was largely stratified into four major divisions: the \textit{Brahmins} (priestly class); the \textit{Kshatriyas} (rulers and warrior class); the \textit{Vaishyas} (trading class); and the \textit{Sadras} (labourer and unskilled workers other than agriculturists). For more details, see: Arun Ray Mohapatra (2007), p. 31.

\textsuperscript{73}Romila Thapar (1978), p. 31.
Again, if we carefully analyze, we find that varna system was a classification of functions not opposed to equality. “One becomes a Brahmin by his deeds not by his family or birth; even a chandala is a Brahmin if he is of a pure character.” says Manu. “Conduct counts not the birth.” Similarly untouchability was initially connected with the impurity of acts and not with the birth.

Although in Buddhism, the republican background nurtured an individualistic tradition with a strong support for the kind of social and moral attitudes implicit in human rights. At the same time the Hindu tradition seemed to be more complicated. This is due in part to the fact that it has to be analysed from two perspectives. There is firstly the overall framework of Hindu society where the emphasis is on duties as mentioned above and, judging by the Law Books, access to rights was limited to the privileged classes.

The second perspective is that of the localized group or caste where the concept of right did exist although to a limited extent. The functioning of each small unit was controlled by its own mechanism and within this unit the individual member could claim rights of equality and self-expression.\(^\text{74}\) The balance of rights and duties was fairly equal. Rights within such a group were not thought of in any total or irrevocable sense. The members of a sub-caste for instance could claim economic and social security from his sub-caste and the right to equality and to protection from violence, provided he observed the rules of that particular group.

### 3.3 Idea of Human Rights in the Medieval India

In the Medieval period, however the three basic elements of the ancient Indian tradition: universalism and humanism in its philosophical thought, the struggle against caste discrimination and religious tolerance received a fresh relevance and impetus from Islam following the Muslim conquest during the tenth century A.D. Emphasizing the greatness of this religion, Abdul Aziz says “in Islam as in other religious traditions, human rights are concerned with the dignity of the individual, the level of the self-esteem that secures personal identity and promotes human community”. He further argues that it also established a social

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\(^{74}\) This is conceded by the later Law Books and by historical evidence such as inscriptions relating to the functioning of the guilds, village councils, caste councils, etc. (Gautama, II, 2, 19-21; Vasistha, I). The Uttaramerur inscription gives a detailed account of the functioning of a village council in South India. For more details, see: Romila Thapar (1978), pp. 35-36.
order designed to enlarge freedom, justice and opportunity for the perfectibility of the human beings keeping an eye on the overall social, political and, economic development of the society.

Although the *Mughal* Government could be typically characterized as centralized despotism, its judicial administration contained all the basic elements of modern doctrine of due process of law, fair trial and independent judiciary.

The Prophet of Islam has also affirmed the need for the solidarity of the human society to forestall injustice and act according to equity and fairness; he says in this connection: “If people see the unjust and do not stop him, God will send them torments as punishment.”

The Medieval period marked the beginning of a new era in the history of India. India was invaded by the Muslim General, Muhammad bin Qasim who defeated Rai Dahir and annexed Sindh and Multan with Arab in 712 AD. The Muslims who came to India made it their home. They lived surrounded by the Hindu people so the state of perennial hostility was not possible. Mutual intercourse led to mutual understanding. Many who changed their faith differed little for those who had left. Thus, after the first shock of conquest was over, the Hindus and the Muslims were prepared to find a *via media* whereby to live as neighbors. The effort to seek a new life led to the development of a new culture, which was neither exclusively Hindu nor purely Muslim. It was indeed a Muslim-Hindu culture. Not only did Hindu religion, Hindu art, Hindu literature and Hindu science absorb Muslim elements, but the very spirit of Hindu culture and the very stuff of Hindu mind was also altered, and the Muslim reciprocated by responding to the change in every department of life.

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75 *Mughal* is a Persian word for Mongol, and was generally used to refer to Central Asian nomads who claimed descent from the Mongol warriors of Genghis Khan. The Mughal rulers were the adherants of Islam.


The conciliatory attitude of the Arabs enabled them to win the confidence of the conquered populace who were quickly reconciled to the *fiat accompli*. For the Indians the Arabs were not the *mlechhas* (impure); whereas three centuries later, Mahmud of Ghazni and his turkish marauders were universally condemned as the *mlechhas* as per the testimony of Alberuni (one of the greatest scholar of the Islamic era) because of the inhuman barbarities committed by them on the people.\(^8^0\) Later on Abdul Qasim Mahmud (998-1030 A.D) ascended the throne of Ghazni in 998 A.D. He led seventeen expeditions in to India from 1000 to 1027. His invasions shook the entire political fabric of the northern and western India or we can say the country witnessed a dreadful holocaust. The people were massacred in cold blood by the marauders who took thousands of them as slaves to be sold in the markets of Bukhara, Samarkand and Baghdad. A number of people were forcibly converted in to Islam. Magnificent temples were razed to the ground and the centuries old edifices of art, architecture and culture were ruined.

One shudders to think of the miserable plight of the unfortunate Indians of those days who did not have the benefit of a country wide national government to look after their interest and soothe their injured sentiments.\(^8^1\) After the death of Mahmud, India enjoyed respite for over a century and a quarter (1030-1175 A.D) from foreign invasions. More than enough time was thus allowed to the Indian princes and the public to shed their regional outlook and set their house in order on national considerations.

Later on, the foundation of the Turkish rule in the northern India was laid by Muhammad Ghori (1175-1205 A.D). The Turkish invaders were full of religious zeal who wanted to spread Islam by force of arms. They believed if successful in the holy war (*jehad*), this world would lie at their feet; otherwise they would attain martyrdom in their death and go straight to paradise (*jannat*). Thus the invaders fought for a cause while the rajputs had nothing better than clan or class interests to defend.\(^8^2\)


\(^8^1\) *ibid.*, Vol. I, p. 63.

3.3.1 The Delhi Sultans and the Spirit of Human Rights

The establishment of Delhi Sultanate (1206-1526 A.D) paved the way for an urban revolution which threw open the cities of northern India with a high caste population to all, irrespective of their caste and creed. The horizon of the merchants’ world was broadened by introducing uniformity in the system of taxation and rules of octroi from Sindh to Bengal.\(^8^3\)

Under the rule of some of the Delhi sultans, there was persecution, and we read of temples being razed to the ground and Brahmans put to death for practicing their devotions in public; however in general the Muslims were reasonably tolerant, and at all times Hindu chiefs continued to rule in outlying parts of India, paying tribute to their Muslim overlords. Conversions to Islam were numerous, though only in a few regions were the majority of Indians persuaded to embrace the new faith. Hindus in those parts of India dominated by Muslims often accepted the situation as normal. In such situation mutual influence was inevitable. Hindus began to learn Persian, the official language of their Muslim rulers, and Persian words found their way into the vernaculars. Well-to-do Hindu families often adopted the system of ‘strict pardah’ from the Muslims, and made their womenfolk veil their faces in public. The serving Hindu kings borrowed new military techniques from the Muslims, learnt to employ cavalry with greater effect, and to use heavier armour and new types of weapons.\(^8^4\)

Alauddin Khalji (1296-1316) one of the greatest sultan of Delhi, attempted to separate religion from politics altogether. While expressing his views Ziauddin Barani, eminent historian of the Sultanat period, said that Alauddin Khalji “came to the conclusion that polity and government are the one thing and the rules and decrees of the Islamic law are another.\(^8^5\) Royal commands belong to the king, legal decrees rest upon the judgement of qazis and muftis. In accordance with this opinion, whatever affair of the state came before him, he only looked to the public good, without considering whether his mode of dealing with it was


lawful or unlawful. He never asked for legal opinions about political matters, and very few learned men visited him”.

Alauddin Khalji liberalized the state policy in the matter of recruitment to the public services. The policy of racial discrimination in the matter of recruitment was discarded by him by throwing open the public services to the commoners, including the non-privileged muslim immigrants, Indian converts to Islam, and even the Hindus. It made him very popular with his subjects. His economic reforms, involving the fixation of prices, control of the markets and rationing of the consumer goods, though not based on very scientific principles, were a unique contribution, envisaged by him far ahead of his times. Thus we can say that his fiscal policies overhauled the Indian economy, promoted trade and commerce, and exercised a deep impact on the socio-economic condition of his urban as well as rural subjects, hindus and muslims alike.

Ziauddin Barani also emphasizes the liberal policy of Ghiyasuddin Tughlaq (1321-25) by which he wanted that all the people, Hindus and Muslims, should be employed, whether in agriculture or in handicrafts and that they should not be worried by poverty or absence of means. Muhammad Bin Tughluq(1325-51) also established hospitals for the sick and alms houses for the widows and orpans, on the most liberal scale. He also had a high sense of justice and he himself tried to judge cases in fair manner. He was very keen on supporting the rationalists against the traditionalists. His liberal spirit is further indicated by a Jain tradition which tells us that the sultan honored the great Jain scholar and saint, Jinaprabha Suri, who visited his court at Delhi in A.D 1328. Muhammad bin Tughluq “treated him with

90 ibid., p. 82.
respect, seated him by his side and offered to give him land, wealth, horses etc which the saint declined. He also issued a farman for the construction of a new basadi upasaraya, i.e rest house for the monks. All this reflects great credit upon the emperor and testifies to his liberal and rational mentality. Notwithstanding all his modesty, his sense of equity and justice and his extraordinary liberality and kindness to the poor he had immense daring to shed blood. In this concern one of the eminent historian Ishwari Prasad has expressed his views that in the age in which he lived cruel punishments were not regarded as abnormal. He expresses that the sultan was not essentially inhuman or wicked, but the hostile attitude of the people goaded him to desperation, so that he was compelled to have recourse to punishments and vengeance as the only means of saving his kingdom from ruin.\textsuperscript{91}

Later, Firoz Shah Tughlaq (1351-88) acceded the throne. Although, he too held narrower views but at the same time, he was the first ruler who took steps to have Hindu religious works translated from Sanskrit into Persian, so that there may be a better understanding of Hindu ideas and practices. He also took number of humanitarian measures. For example, he banned inhuman punishments as cutting of hands, feet, nose etc. for theft and other offences. He set up hospitals for the free treatment of the poor, and ordered the kotwals to make list of unemployed persons, and provided dowries for the daughters of the poor. He emphasized that the state was not meant merely for awarding punishments and collecting taxes, but was a benevolent institution as well. In the context of the medieval times, the assertion of the principle of benevolence was a valuable one and Firoz Shah Tughlaq deserves credit for it.\textsuperscript{92}

The state under the Delhi sultans was Islamic which means that the sultans did not allow any open violation of the Islamic laws and appointed Muslim divines to profitable offices of state and granted revenue free lands to many of them. However, at the same time, they did not allow the Muslim divines to dictate the policies of the state. During the reign of Iltutmish(1211-36), a party of Muslim divines approached the sultan, and asked him to enforce the Muslim law strictly, giving the Hindus the option of only Islam or death. On

\textsuperscript{91} id., Also see: Radhe Shyam Chaurasia (2002): History of Medieval India From 1000 A.D to 1707 A.D., New Delhi: Atlantic Publishers, p. 58.

behalf of the sultan, his wazir told the theologians that this was impractical and impolitic since the Muslims were so little in number as salt in a dish of food. The sultans had to supplement the Muslim law by framing their own regulations (zawabit).

Alauddin Khalji told the leading Qazi of the city that he did not know what is lawful of unlawful but framed laws according to the needs of the state. In lieu of this historian Ziauddin Barani accepted that a truly Muslim state based on din-dari was not possible in India. In a state based on Jahandari, while all deference was to be paid to shara and the Muslim theologians, the governance of the state depended on the secular ruler who could frame Zawabit or state laws for the welfare of the state. As Professor Mohammad Habib says ‘Barani leaves us in no doubt that in cases of conflict the state laws overrode shariat’. However the position of the Hindus in the Islamic State of Delhi did not depend much on the character and personality of the Sultan, but was determined by the Quranic policy, as was understood in the country in those days. This was clearly based upon discrimination between Muslims and Hindus, and the latter were relegated to an inferior position without any political status of civil rights in the land of their birth.

3.3.1.1 Religious Freedom Under the Sultanat

The Sultans of Delhi (1206-1526) found it impossible to enforce the strict observance of law as described in the books of Muslim jurists. Some of them tried their utmost to conform to the Islamic law and practice and enforce it in their administration, but they did not succeed. Although they did not leave the Hindus undisturbed to follow their own laws and customs, yet circumstances obliged the Sultans to make a compromise with the law of the country.

According to Ziauddin Barani, Jalaludin Khilji observed that even in the capital and provincial centres, the idols were publicly worshipped and the texts of Hinduism publicly preached. “The Hindus pass beneath the wall of the royal palace in processions, singing, dancing and beating drums to immerse the idols in the Yamuna, and I am helpless,” he said.

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93 Satish Chandra (1990), p. 84.
While no individual rights were sacrosanct in an autocratic state, that *shara* could restrain individual arbitrariness and safeguard the sanctioned religious rights of the non-muslims, is exemplified by the case of Sikander Lodhi (1489-1517), who sought a *fatwa* from the *Qazis* whether he could stop the practice of the Hindus congregating at Thaneswar for religious bath in the pool there. The *Qazis* ruled that not only could old temples not be destroyed but that old, well established religious practices could also not be stopped. The point here is that while acts of individual arbitrariness could not be put a stop to, the sanctioned religious rights of the Hindus were well known and recognized even by the *ulama*. We may consider this to be an integral part of the state based on *jahandari*, irrespective of Barani’s own opinion in the matter.  

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Despite the pressure of a section of the orthodox theologians, this policy of broad toleration was maintained during the Sultanat, though with occasional lapses. On the whole, conversions to Islam were not affected with the strength of the sword. If that was so, the Hindu population of the Delhi region would have been the first to be converted. The Muslim rulers had realized that the Hindu faith was too strong to be destroyed by force. Sheikh Nizamuddin Auliya, the famous sufi saint of Delhi observed, “Some Hindus know that Islam is a true religion but they do not embrace Islam.” Barani also says that the attempt to use force had no effect on Hindus. Moreover the contribution of philosophers like Ramananda, Chaitanya Mahaprabhu, Shri Ramanuja and host of others helped in promoting better understanding in a society where people of all beliefs co-existed.

At the same time, lasting for almost three centuries as the foremost powers in south India, the kingdom of Vijayanagar (1336-1529) founded in 1336 A.D. represents the last great native

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97 *ibid.*, p. 47.
100 Ruled by four different dynasties - The Sangamas, the Saluvas, the Tuluvas and the Aravidus Vijayanagar unified the region in a manner which no other kingdom had done in the past. It brought three major
phase in the annals of the history of south India. There were large scale military conflicts in peninsular India after the Turko-Afgan sultans Alauddin Khilji and Muhammad bin Tughlaq led incursions into the region which shaped and reshaped the history and the fortunes of the Deccan and the Far south. In addition to this a significant rise in the prosperity of the region made it a hub of trading activities, linking it to northern India as well as Europe and East Asia.\textsuperscript{101} Bukka I (1356-1377 A.D) is considered to be one of the greatest monarchs of the age and the real architect of the Vijayanagar Empire. In an age marked by religious bigotry and fanaticism, his policy of religious tolerance deserves special mention. Taking advantage of the dispute between the Vaishnavas and the Jainas, he issued an edict, copies of which were set up in important centres, proclaiming that from the stand point of the State, all religions were equal and entitled to protection and patronage.

The policy of religious concord, indicated in this edict, was followed by all his successors. All religious communities of the kingdom including the Jews, Christians and the Muslims looked upon him as the guardian of their religious rights and privileges.\textsuperscript{102} Similarly under the Bahamani Kingdom\textsuperscript{103} (1374-1538), Islam existed in all forms together with the Hinduism, creating an atmosphere that led to the evolution of liberal and open minded approach based on sharing and adoption of mutual traditions and customs. The integration and acceptance of the native Hindus, northern Indian Muslims and Afaqis into the plural society of the Deccan is a noteworthy fact. The cultural trends in the Bahamani kingdom and its five successor states led to enriching the synthesis and fusion that was already present in the Indian society.\textsuperscript{104} As far as Bahamanis are concerned, Ala-ud-din Ahmad (1436-1458) deserves special mention as his reign is notable for the establishment of large hospital. A number of villages were endowed to this institution for the revenues of which were paid the cost of medicines and food of the patients and possibly also the salaries of the staff.

\begin{itemize}
  \item linguistic groups- the Tamils, The Kannadigas and the Telugus under one banner, cemented their differences and encouraged the emergence of what we called south Indian culture.
\end{itemize}

\textsuperscript{101} ibid., p. 114.


\textsuperscript{103} Hasan Gangu founded the Bahmani dynasty in 1374 which ruled the Deccan for the next two hundred years.

Hindu and Muslim physicians were employed in this hospital and it can be inferred from this that it was opened to all irrespective of caste and religion.  

3.3.1.2 The Practice of Slavery During the Sultanate Period

The system of slavery was prevalent in India before the advent of Islam albeit the mamluk sultans and their Turkish nobility, who themselves happened to be the products of a highly commercialized institution of slavery gave new dimension to this social evil. The practice of recruiting domestics and hired labour for menial services and manual work was conspicuous by its absence among them. Almost all the manual works and the menial services were offered by the slaves. The Turkish sultans and their nobility strove hard to multiply their slaves by all means; they allowed their slaves to marry and bring up families because the offspring of the slave couples also became automatically the property of their master, and this factor, incidentally added to the growing Muslim population of Hindustan. K.M. Ashraf expresses his views about the status of slaves in the following words:

> It is usual to assume that slaves had no defined status or rights under the Muslim rule in Hindustan. Such an opinion is not warranted by the facts. Theoretically speaking, since a slave was usually a convert to Islam, he possessed the same rights as any other member of the Muslim society which is still conspicuous for a certain amount of feeling of brotherhood and equality. Thus, his moral claims, though he might not receive due and full recognition, could never be denied. If he was originally a Hindu, and probably of lower caste, the social change was decidedly for the better. Even if he belonged to a higher caste, he had lost his status in the Hindu society and could not go back to it except under very humiliating conditions. In fact, the slave was usually a prisoner of war, and according to the military usage of the age, his life was at the mercy of his captor, who had full power of killing him or of otherwise disposing him.”

Stable Mughal rule succeeded the more turbulent Delhi Sultanate and produced a composite culture in which Indian and Persian, Hindu and Muslim, elements mixed and flowered in art and architecture, dance and music, literature and philosophy, dress, court manners and even popular religion.


3.3.2 The Mughal Regime and the Spirit of Human Rights

Under the sixteenth and the seventeenth centuries the Mughal emperors unified practically the whole of North India and much of the deccan, and built up an empire such as had not been seen since the days of the Guptas. The Mughal period was one of the great splendor, which has left its mark on India in the form of many lovely buildings, wherein Islamic and Hindu motifs are often blended in a perfect unity.\(^{108}\)

The system which was prevalent during the Sultanate period was not altered by Babur (1526-1530) and Hamayun (1530-1556) as far as the status of Hindus was concerned. It was Akbar (1556-1605), the contemporary of Queen Elizabeth-I was the first of the four great Mughal emperors, who fully realized that the empire could stand only on a basis of complete toleration. All religious tests and disabilities were abolished, including the hated poll-tax on unbelievers.\(^{109}\) Rajput princes and other Hindus were given high offices of state, without conversion to Islam, and inter-communal marriages were encouraged by the example of the Emperor himself. If the policy of the greatest of India’s Muslim rulers had been continued by his successors, her history might have been very different.\(^{110}\)

Thus we see how through his religious policy, Akbar tried to preach the ideas of secularism and religious tolerance. He considered interference in the religious beliefs of his subjects as illegal and that Hindus forcibly converted to Islam would revert back to their former religion. Hindu girls who had been forced to marry Muslims should be restored to their families, and both Hindu and Muslim parents who had sold their children as slaves due to poverty could now buy them back. In terms of the Sharia this meant that apostasy was no longer punishable by death. Akbar considered the problem mainly from humanitarian point of view. He also prohibited polygamy and allowed a second wife only in exceptional circumstances. Child

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\(^{108}\) S.A.A. Rizvi (2000), p. XVIII.

\(^{109}\) The first law, repealed in 1562, was with regard to the making of prisoners of war and their conversion and those of their families into slaves and Muslims. In 1563, the Hindu Pilgrims’ tax was abolished and 1564 saw the abolition of the most discriminatory tax, namely, the Jizya. The repeal of other Islamic laws followed, and one by one all social, religious and legal disabilities imposed by the Islamic law on the Hindus were repealed. For further details, see: Shireen Moosvi (2005): Episodes in the Life of Akbar: Contemporary Records and Reminiscences, New Delhi: National Book Trust of India.

marriages were forbidden on the ground of health and the marriage of an old woman to a young husband was considered contrary to modesty. Although he appreciated that the custom was a preventive against rash divorce, Akbar nevertheless discouraged fixing heavy amounts to be met by a husband if he divorced his wife without sufficient cause.111

Akbar ordered a considerable change in the law of evidence. According to sharia, the plaintiff was required to present two male adult Muslims to testify orally to their direct knowledge of the truth of his claim. If in certain cases he took an oath confirming his claim, however, only one witness was necessary. The testimony of women was admissible, but two women took the place of one man. The witness had to be known for their extreme religious and moral probity but the cross-examination of witness was not allowed. Consequently the only recourse for the defendant was to impugn the witnesses’ characters.112 The laws and regulations instituted by Akbar had been intended to ensure the maintenance of a tolerant, dynamic and humane leadership over heterogeneous religious and racial groups.113

Akbar’s great regard for rights, justice and secularism could be cited as an example in this regard. Through his religious policy, he tried to preach the ideas of secularism and religious tolerance. Similarly, parallel to Akbar’s exquisite religious reform policies, religious movements like Bhakti and Sufi made remarkable contributions towards eliminating irreligious practices of the contemporary society.114

The great-grandson of Akbar, Aurangzeb (1658-1707), reversed the policy of tolerance.115 Restrictions were placed on the free practice of Hindu rites, and preference at courts was confined to orthodox Muslims; later the tax on non-Muslims was reimposed. After nearly a century of equality this was bitterly resented by many Hindus, especially by the chiefs, many of whom had loyally served the earlier Mughals. The main resistance came from the Western Deccan, where, around Poona, the Maratha chief, Shivaji (1627-80) laid the foundations of a

111 ibid., p. 166.
112 ibid., p. 167.
114 ibid., p.32.
new Hindu empire. At about the same time the Sikhs of the Punjab, incensed at the new policy and the persecution of their leaders, reformed their faith, and were welded into a closely knit martial brotherhood. When the aged Aurangzeb died, the Mughal Empire was virtually at an end.

3.3.3 Influence of the Bhakti and the Sufi Movements

Saints of the Bhakti movement championed the cause of the downtrodden and preached equality of human beings. The sages, seers and saints of India have hit upon it in course of their quest after perfection and higher spiritual life, without using the language of rights. They spoke of Bhakti which knows the language only of love.

A spirit of human rights is clearly discernible in the Bhakti movement led by a galaxy of saints coming from different parts of the country and from all strata of society in medieval India. The saints Guru Nanak, Chaitanya, Kabir, Namdeo, Eknath, Tukaram and many others, male and female - were the prophets and pioneers of social and religious freedom. They showed a great independence of spirit. The first characteristic of their teachings is freedom from slavery to external authority. In hymn after hymn we discover that they revolted against shastras and their blind acceptance and rendered glowing tribute to the living faith. Guru Nanak said: “Religion does not consist in patched coat, of yogi’s staff or ashes smeared on

116 Shivaji himself took a tolerant view of the religious differences that were existing at that time. The Mughal historian khafi Khan who was no admirer of Shivaji in any respect, seems to have reported: “Shivaji made it a rule that where ever his followers were plundering they should not do any harm to the mosques, the book of god or the women of anyone. Whenever a copy of the sacred Quran came to his hands, he treated it with respect and gave it to some of his Mussalmann followers”. For more details, see: Percival Spear (ed.): The Oxford History of India (1974) Fourth Edition, Translated by Vincent Smith, London: Oxford University Press, p. 412. Also see: Amartya Sen (1997): “Human Rights and Asian Values.” The Sixteenth Morgenthal Memorial Lecture on Ethics and Foreign Policy, New York: Carnegie Council on Ethics and International Affairs, pp. 1-32, at p. 26.


118 S.A.A. Rizvi (2000), p. XVIII.


body. Religion does not consist in mere words. He who looks on all men as equal is religious.”  

With Guru Nanak, Bhakti Movement did not remain merely a religious movement; it became a movement for social change; it revolted against all social evils, caste system, untouchability and all other invidious distinctions between man and man and between man and woman.

Another trait of the poet-saint’s teachings was democratization of religion. Religion ceased to be the monopoly of priests and it was proclaimed to be the birth right of every man and woman. Before the appearance of the saints on the scene, religion belonged to a certain privileged classes.

One great religious teacher of Medieval India, Kabir (1425-1505), a poor weaver of Banaras, taught the brotherhood of Hindus and the Muslims alike in the fatherhood of God, and opposed idolatory and caste practices, declaring that God was equally to be found in the temple and the mosque. Later Guru Nanak (1469-1539) taught the same doctrine with even greater force, and founded a new faith, that of the Sikhs, designed to incorporate all that was best of both Hinduism and Islam.

The Bhakti movement has undoubtedly contributed to the cultural empowerment of the non-elite sections of the society, by vernacularization on the one hand and by championing emancipation from caste restrictions on the other. The language it employed was accessible to common man. Vernacularization was not, however, purely a shift in the mode of communication; it was also representative of social assertion. It brought into being a new idiom through which protest, dissent, and resistance could be effectively articulated. For the language of the dominant can hardly be an effective weapon to challenge the dominance itself.

The internal differentiation within the society represented by caste divisions was a concern, in both concept and practice, for the Bhakti movement, engaged as it was in the creation of an

123 S.A.A. Rizvi (2000), p. XVII.
egalitarian order. Rejecting caste as a principle of social organization, the Bhaktas questioned its social relevance and sought to undermine it in practice. ‘Let no one ask a man’s caste’ was a slogan shared by many. In practice, they transcended all caste barriers and practices and renounced all rituals and superstitions. Rejecting caste distinctions, they emphasized equality and commonality.

The creation of casteless communities, either temporary or permanent, in which the followers of Bhakti saints congregated was the practical manifestation of this attitude towards caste. They ate together as equals and addressed one another as brother and sister. The nineteenth century reform movements carried this tradition forward. Anti-casteism was an important agenda for all reformers, even if compromises were not unusual in actual practice. A.R. Desai, an eminent historian, has argued that this movement against caste distinctions was the earliest expression of the democratization in Indian society.124

By the end of the fifteenth century Sufi saints had established their centres in various parts of the country and how they, especially the saints of the Chishtiya order, had succeeded in gaining large number of adherents amongst the Muslim masses. Historically, Sufism was a religious system which in the course of its development had imbibed several beliefs which are essentially of Hindu origin and which in one form or the another, were already familiar to the Hindus and the majority of the Indian Muslims converted from Hinduism, who came into contact with the great Sufi teachers. It is not strange therefore that in the sixteenth and the seventeenth centuries, it came to be a common practice with the bulk of Indian Muslims to be attached to some religious preceptor, usually a Sufi, just as the Hindus considered the guidance of a Guru to be essential for one’s salvation, so that every religious minded Muslim linked himself up with one Sufi Silsila (chain) or another as a sine qua non of respectability and religious awareness.125 It was through their simple philosophy, uncomplicated practices and spirit of tolerance and accommodation that the Sufis won the hearts of the masses, which thronged the Khanaqas. By speaking about the universal love in search of the almighty, Sufi philosophy had heightened the atmosphere of religious tolerance, echoing the spirituality and cultural refinement inherent in Islam.126

Both the *Bhakti* and the Sufi movements were anchored in such a Universalist perspective, and sought to incorporate common element from different religions. As a result they attempted to erase the distinctions that separate religion as irreconcilable systems with incompatible structures of belief.\(^{127}\) Thus medieval religious movements had two significant legacies: religious universalism and social egalitarianism, developed in the context of a multi religious society. Both found further articulation and elaboration in the religious and social thought during the colonial period and is taken up in the next chapter in detail.\(^{128}\)

### 3.4 Conclusion

After going through the above discussion we find that human rights are historically conditioned and vary in accordance with the changes in the social, economic, political, cultural and other aspects of the society. The contemporary situation of human rights is characterized by the gulf between thought and reality, aspiration and achievement. Human rights are closely linked with person’s duties towards the society. The Indian View stresses on the performance of the duties instead of demanding rights. If all individuals perform their duties, the rights of others are automatically secured. The rights without duties carry no relevance. Therefore an in-depth analysis of human values and human rights is required and also the need for understanding of human right with a new orientation in the light of contemporary realities which shall be reflected in the subsequent chapters.

While discussing about human rights in Ancient India, It is premature to look for well-articulated legal codes in the culture of two thousand years ago which might reflect human rights as we know them and desire today. In the ancient past there were moments when societies incorporated the metaphysical ideals of human rights into their legal and social functioning. The word human rights is essentially a recent phenomenon however the spirit is as old as the human civilization. Here the words of A.L. Basham, an eminent historian, deserve special mention, “At most periods of her history, India, though a cultural unit, has been torn by internecine war. In statecraft her rulers were cunning and unscrupulous. Famine, flood and plague visited her from time to time, and killed millions of her people. Inequality of

\(^{127}\) *ibid.*, p. 97.

\(^{128}\) *ibid.*, p. 100.
birth was given religious sanction, and the lot of the humble was generally hard. Yet our overall impression is that in no other part of the ancient world were the relations of man and man, and of man and the state, so fair and humane. In no other early civilization were slaves so few in number, and in no other ancient lawbook are their rights so well protected as in the *Arthasastra*. There was sporadic cruelty and oppression no doubt, but, in comparison with conditions in other early cultures, it was mild. To us the most striking feature of ancient Indian civilization is its humanity.”129

Similarly as already discussed the Islamic social order in India, which was in theory based on such high sounding principles as ‘social equality, brotherhood, dignity and self-respect of the individual’ would be degraded to such limits, could never be envisaged by Hazrat Muhammad, the Prophet. Their lust for power had divided the Muslim state into racial groups and prompted them to exercise discriminations between the high born and the low born, while their greed for material benefits and exploitative spirit were responsible for reducing the human beings to the position of cattle, rather worse than that. No wonder during the Sultanate period, a horse of good breed was better looked after and more highly priced than a dozen men and women slaves. The Hindus had practiced untouchability and were guilty of having exploited their low-castes or the working classes; what the Muslims did in this regards was equally disgraceful.

However, despite of a despotic political order, the benevolent aspect was not missing completely as far as the mass of the people, especially the ordinary peasants, were concerned. This was true as long as the peasants were submissive - a point emphasized repeatedly by both Fakhr-i-Mudabbir and Barani. As long as these sections continued to pay the taxes (*Kharaj, Jizyah* etc.) without remiss, they were not persecuted but preserved. Inspite of number of negative features during the Medieval period, the state formation showed considerable developments. Directly or indirectly it aided and promoted economic growth, social change and cultural integration. In the field of ideology, a moderate Islamic state, which according to Barani, was based on *Jahandari* was sought to be developed into a *de facto* secularist state under Akbar. In course of time it settled down as liberal Islamic state. Thus we see the manifestation of the idea and spirit of human rights in different phases of Indian history, be it in form of benevolent government, Ashoka’s Dhamma, humanitarian

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concern of different rulers, Akbar’s policies and the Bhakti and the Sufi movements etc. It is this spirit which has always inspired the Indians and made them proud about their glorious civilization and later on became a potent factor in securing independence from the British rule and has been taken up in detail in the subsequent chapters.