CHAPTER – II

DIRECTIVE PRINCIPLES: CONCEPTUAL ANALYSIS

“Right is right, even if everyone is against it and wrong is wrong, even if everyone is for it.” ...

- WILLIAM PENN
CHAPTER – II

DIRECTIVE PRINCIPLES: CONCEPTUAL ANALYSIS

The relative importance of political rights on one hand and economic rights on the other gave rise to serious debates in the context of human rights. The democratic countries endowed with economic surplus emphasised the former, while socialist countries espoused the later.

Balancing of social interest with those of personal liberties is perhaps the greatest task which the modern governments are enjoined in the twentieth century. This becomes imperative for our country where democracy subsists. Individual liberty within the ambit of social security is the cardinal principle upon which every democracy is founded. Liberty never means ‘Unfettered freedom’ for that would virtually lead to anarchism. It consists in doing what one desires. Man as a rational bring desires to do many things but in a civil society his desires have to be controlled, regulated and reconciled with the exercise of similar desires by other individuals. Liberty has therefore to be limited in order to be effectively possessed.¹

Ever since the inception of civilised life in a political society, men’s struggle against tyranny and shortcomings of the power has been sustained with assertion of their rights, thought at time, with dismal failure and it still continues. The human history of the world is none other than the progress of consciousness of freedom.

The natural rights were the earliest form of rights. The right of life was the earliest right to be recognised or that which human being becomes conscious of, this came to be considered as an alienable right. This inalienable right over a period of time acquired deeper meaning and larger dimension in the form of Human rights and in particular fundamental rights.

2.1 WHAT ARE RIGHTS?

Rights are centre opportunities essential for the development of human dignity, faculties and personality. In their positive aspect they promote human aspirations. In their negative aspect rights protect one against arbitrary behaviour of another person and of the state machinery.

Rights enlarge the area of freedom, offer security from violence and discriminatory treatment and are expected to ensure general protection against all kinds of oppression. In this interpretation larger the number of rights higher is the rating of a society and the
state in civilised scale. The reverse happens when rights are restricted severely.

Right is a social concept, without a society conscious of common moral and social interest and obligation there may not be any right. There is likely to be display of power, and might become rights but rights do not become might.

The meaning, content and nature of right changed from generation to generation and it can be studied in three phases:

1. First Generation Rights: Civil and Political Rights.
3. Third Generation Rights: Right to develop and other collective rights concept of human rights and the ideal that right springs from rights.

2.1.1 FIRST GENERATION RIGHTS: CIVIL AND POLITICAL RIGHTS:

The primitive man had no notion of Fundamental rights, though he did have a number of freedoms which no civilized man can ever boast of. In other words, in the primitive society which was purely unorganised these freedoms had no meaning and no relevance. The fact of the matter is that, in that society the social need for liberty and freedom did not exist. It is a unique feature of the history of the
development of political institution that the progress towards an organised society was not a movement towards the attainment of rights, fundamental or otherwise but towards the suppression of the absolute and restricted freedom of the primitive man.

If we look at the feudal society, you may find that there was total negation of fundamental rights. Social structure was based on a relationship of tenure organised in a hierarchical gradation at the top of the pyramid stood the sovereign, but even the chiefs and lords exercised almost total control over the life and liberty of their tenants. In other words, the rights were confirmed only to a few privileged persons and the majority of the people had no rights of freedom. The sovereign had not merely the absolute law making power but also enforcement of law depended on his whims and fancy.

In the Sixteenth and Seventeenth centuries, there was rise of middle class who were highly intelligent, educated and were aware of their rights, raised their voice against the existing system. This was an era of dawn of industrialism. This gave impetus to the emergence of new thinking, based on a prior assumption. This thinking has been veering round the theory that man has certain inherent, inalienable, immutable and inviolate freedoms and rights which nobody on earth could take away. It was asserted that the state was bound to recognise these rights and freedoms and allow them a free play. These rights could not be tempered or interfered with in any
circumstances by the State. Thus, there emerged a new thesis on fundamental rights based on the philosophy of natural law school.\textsuperscript{2}

The natural law theory promoted the idea that man is endowed by birth with certain inalienable rights of which right to life, liberty and property are paramount. This inalienable right over a period of time acquired deeper meaning and larger dimensions.

The whole concept of natural rights was subject to severe criticism from several quarters. It was Bentham who observed that ‘Rights’ is the child of law, from real law comes real rights but from imaginary laws, from law of nature comes imaginary rights.\textsuperscript{3} That there were alienable rights called natural rights ever since human being came into being may contain a point but historically viewing the verifiability of these remains doubtful. That human being had a right to life and that was inalienable is not valid at the stage of food gathering when human life was vulnerable and there was no protection whatsoever. At this stage life itself was problematic. The problems leading to solutions and solutions throwing up the problems got linked with the nature of production. It was this logic that led to the formulation that rights are not natural but social. This implies that the concept of natural rights was a later social or political construct impound retrospectively on the origin of rights.

\textsuperscript{2} Dr. Meena Rao, Evolution & Growth of Human Rights in Constitution of India. See Human Rights and the Law Nation and Global Perspectives (1977) p. 27

\textsuperscript{3} Prof. G. Haragopal. Emergence of Universal Human Rights: New Dimensions, Human Rights (1997) p.4
During the medieval period all thinking was God centered. From the European renaissance onwards a movement to view things on earth from human perspective started. Political revolutions against monarchical absolutism in England, France & U.S.A. strengthened the movement for rights of man against arbitrariness.

The contractualist like Hobbes, Locke, and Rousseau intervened with their powerful ideas that political power was created and has been sustained by the express consent of the people. Divine will and kind will have no part to play in organising the political system called the state. People have the fundamental right to make and unmake political power. In this period, language of rights appeared and developed.

Grotius said that there are two types of rights belonging to the individual. They are those that can be alienable and those that are inalienable. Inalienable things are those which belong essentially to one man and they do not belong to any other for instance man’s life, body freedom, honour, etc.

Hobbes in his political and legal doctrines advocated a form of Government which may be described as enlightened absolutism. Life, Liberty and property were not yet recognised as Inalienable rights immuned from government interference they were subject to benevolent regulation by the state.

---

4 Bhattacharya, Human Rights: Their meaning. Ibid p.2
The first period in the history of the classical law of natural school favoured security more than liberty while the second period placed emphasis on liberty.

With Locke, the idea of human right came to the centre of the political stage. He opens his theory with an observation that individual possesses their rights even before government came into existence. He said individual keeps not only the right to life but the right to liberty and property as well. These possessions which individuals have both in and out of government provide the basic foundation of his notion of right. All individuals without exception possess these rights. He argued that individual cannot give up his natural rights to life liberty and estate to the state.

The government does not create any new rights for the individual rather it itself is created to preserve the natural rights through the use of a Constitution or a Bill of Rights. A state or a ruler which fails to recognise the rights by law has usurped its contractual authority and abused the power given to it. The citizens retain a potential right of revolution and can legitimately overthrow a government if it fails to secure their rights.

Locke’s concept of social contract propagated a view that absolute monarchies where commands of the monarch were the rules for the subjects were no longer suited to the developing societies and there was a growing need for minimum government with maximum
individual liberty. He stressed that certain rights of men were necessarily inalienable and could not be subordinated to the ruler.

The other proponent of social contract theory is Rousseau, whose famous work the social contract starts with a statement ‘Man was born free and everywhere he is in chains’. He thought that the natural man who was yet not a social being enjoyed unrestricted freedom in the state of nature. The formation of the society with certain norms of which human being became the member resulted in the loss of the freedom. It was through social contract and creation of state that men created rights. He states that what a man loses by the social contract is the natural liberty and unlimited right to anything which tempts him and which he is able to attain what he gains is civil liberty and property in all that he possess.

The political philosophies of Locke, Voltaire, Montesquieu, Rousseau, Burke and others generated a current of liberalism throughout the European sub-continent. Locke gave theory of inalienable rights of individuals which were later termed as inalienable, inviolable, transcendental fundamental rights or civil and political rights.

The French Constitution framed after the revolution of 1789 also described that the aim of the State in the ‘conservation of natural rights of man’s namely liberty, security and resistance to oppression. It also granted civil liberties of association, freedom of speech and expression as also the rights of minority, freedom of
conscience thought and education also formed an integral part of the civil liberty of man in a State.\(^5\)

The American notion of civil liberty was largely influenced by the ideals of French Revolution. The American war of Independence overthrew British colonism and imperialism. Justice Holmes suggested that the right to life, liberty, equality and the pursuit of happiness were of paramount consideration for the government to organise its power in such a form as to ensure the safety and happiness of the governed.

Many countries incorporated in their constitution these rights as fundamental rights. In Nineteenth century it becomes part of law of nearby all European including communist states. Locke’s theory had great influence on the American and French revolution.

As a logical consequence to the right to property and the right to be ruled by consent, there came into existence the fundamental right to freedom of thought and expression together with the right to bear arms. A view prevailed that the right to resist the undemocratic rule would be meaningless unless the citizens had the right to bear arms. These rights were designated as political rights.

In addition to the political rights, other rights called Civil rights also found their recognition. These included the right to property, equality, personal freedoms, the right to assembly and association, the

\(^5\) Mukherjee P.B., Civil Liberties, Ramanand Lectures, Calcutta University (1965) p.7
right against search, the right to trial by jury, the freedom of conscience, etc.

Thus was inaugurated the era of the declaration of fundamental rights. The constitution came into existence in which the Bill of Rights was part of the Constitution. The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majority and to establish them as legal principles to be applied by courts. These fundamental rights – the right to life, liberty and property, to free speech, to free press, the freedom of worship and assembly must not be submitted to vote, they depend on the outcome of no elections.

2.1.2 SECOND GENERATION RIGHTS: ECONOMIC AND SOCIAL RIGHTS:

The English revolution, the French revolution and the American struggle for independence provided much of the metaphysical inspiration for the modern declaration of human rights and urge for Socio-economic justice. It was believed that mankind was on the threshold of a new age in which right reason could triumph and in which all citizens would enjoy their natural and imprescriptible rights to life, liberty and the pursuit of human happiness. It was the duty of the government to preserve these rights because men everywhere had certain inherent spiritual and material needs and the rights necessary
to meet those needs are natural and inalienable. A government which failed to safeguard them could not justify its existence.  

The state of affairs led to some rethinking. It was felt that laissez faire works hardships when men are not equal. No democratic state could tolerate this ignoring state of affairs where the weak were continually driven to wall. A feeling generated that if fundamental rights were to have any meaning to the millions, their contents must change. If rights were considered as conditions necessary for the fulfilment of life, then the working class too, should have these rights guaranteed to them. The resultant effect was the emergence of a new chapter of fundamental rights which was entitled as “social and economic rights”. It includes the right to work, right to leisure, right to public assistance in case of unemployment, old age or sickness, right to collective bargaining, right to education, and the like.

A trend to include those rights as part of Bill of Rights started only in the Post-World War era. In the Weimer Republican Constitution and the Constitution of USSR these rights were recognized as fundamental rights. In the modern constitutions of many states, these rights, in one form or the other, are also recognized, though agreement still persists on the details of their contents.

At the international level also, various measures have been adopted to guarantee human rights which include not only civil

\[\text{\cite{Gair Ezezuonfor, Protection of Human Rights under the Law (1964) p.9}}\]
and political rights but also social and economic rights. The Universal Declaration of Human Rights adopted by the General Assembly of the United Nations on 10th December, 1948 is an important landmark in the development of rights at the international level. It contained not only the civil and political rights but also social and economic rights.

**2.1.3 THIRD GENERATION RIGHTS: RIGHT TO DEVELOP AND OTHER COLLECTIVE RIGHTS:**

The creed of liberalism in 19th Century, political freedom and civil liberty of men was carried further by utilitarian like Mill, Spencer and Bentham through the individualistic doctrine of *laissez faire*. This however, led to certain unpleasant results, such as capitalism, monopoly and concentration of wealth with the few. The competition between individuals and the groups within the state needed an umpire to ensure that no one gets and unfair advantage over the other. The twentieth century, therefore, witnessed a trend in the reverse direction in the political sphere. The state inevitably assumed the role of a referee to resolve dispute between the individuals and the groups in almost every walk of life. Consequently, the problem of civil liberty was to bring about an adjustment between individual freedom and social control.\(^7\)

---

\(^7\) Mukherjee P.B., Op. Citn. 5 p-15
With the shift of emphasis from individual to community it has become an accepted principle of the modern constitution that individual liberty and rights are subject constitutional restraints. The Nature of the limitation imposed on a government and the degree to which a constitution will be supreme over a government depend upon the objects which the framers of the constitution wish to safeguard. Countries desiring to ensure certain rights to their citizen incorporate adequate provision in their constitution which restricts the legislature and executive not to invade these rights.\(^8\)

The changed political philosophy, new theories of science, industrial revolution, new economic thought and new ideas in other social sciences in the 19\(^{th}\) Century had their influence on the legal thought also. The French and German writers laid the foundations of the ideas of communism and socialism which threw new lights on the purpose of law. The theory of biological evolution gave the idea of organic development which was applied on law also. In this way, there took place a revolutionary change in the concept of law.\(^9\)

At one time, it was thought that the state was mainly concerned with the maintenance of law and order and the protection of life, liberty and property of the subjects. Such a restrictive role of the state is no longer a valid concept. A modern state is certainly expected

---

\(^8\) Wheare K.C. Modern Constitutions (1951) p.10  
to engage in all activities necessary for the promotion of the social and economic rights and welfare of the community.

The idea of sovereignty is replaced by the idea of public service. The state is no longer a sovereign power issuing commands. It is a group of individuals who must use the force they possess to supply the public need. The idea of public service lies at the very base of the theory of modern state.\textsuperscript{10}

The growing realisation that the traditional rights like those of freedom, liberty and equality could hardly be meaningfully enjoyed unless accompanied by social and economic rights or that the concept of the rights of individual has to tamper with the concept of Justice, Social, Economic and Political has been significant development.

The advance of modern science and technology on the industrial plane the political liberation of dependencies in Asia and Africa and the progress made by the under-developed countries have brought about a radical change in the man’s outlook towards civil rights. The problem of national security in the present nuclear age has further posed a threat to the cause of civil liberty. Especially after world war, it was realised that legal or constitutional sanctions alone were not capable of preserving the civil rights of men which obviously were a dynamic content. It was felt that political or personal freedom would

\textsuperscript{10} Ibid p.29
become meaningless without taking into consideration the socio-economic realities of the countries.¹¹

Consequently the Constitutional principles regarding Socio-economic policies we adopted by many countries in their Constitutions, though the content was never uniform but they were heading towards same goal.

The post-modern era contributed by Rawls and Dworkin’s theory resulted into a new concept that Right springs from rights. The social and economic rights are not new rights but they are the extension of civil and political rights already in existence.

Rawls reject utilitarianism as he believes that it would allow the sacrifice of some people’s right. Basic liberties should apply to everyone equally. However he does not expect liberty to be unlimited. There should be distribution of wealth and income which may not be equal but it must be to everyone’s advantage.

Dworkin writes that rights of individual are political triumph held by individuals. He distinguished rights from goals. An individual cannot have unlimited liberty because government can impose reasonable restriction on them on the ground of general interest or general welfare. To that extent, it cannot be a right. Citizens have moral rights and duties with respect to one another and political rights against the state as a whole. It insists that these moral and political

rights be recognised in positive law so that they may be enforced upon the demands of individual citizen through courts or other judicial institutions.

Finally he concludes that each individual possess a set of moral rights which the legal system has to recognize and protect and which cannot be tampered even if it is for the sake of collective good.

The above discussion about the development of rights can be concluded as follows:

That there are certain minimal rights which have come to be accepted as basic freedom of the individual. These rights are broadly classified into mainly two types; Civil and Political rights on one hand and economic, social and cultural rights on the other hand. These are indivisible and interdependent. While the former are more in the nature of injunctions against the authority of the state from encroaching upon the inalienable freedom of the individuals, the latter are demands to exercise those rights, unless both set of rights are available neither the full development of the human personality can be achieved nor true democracy can be said to exist.

The debates on natural rights coupled with the fruits of European struggle did contribute to the modern notion of Universal Human Rights the fact that the Universal charter incorporated noting but giving to what was called natural right a moral and legal status.
The 1948 declaration was in a significant way a crystallization of the legacy of rights. It is true that most of the rights included in the charter are the products of individual versus collective rights at one level and market versus state at another. The debate and struggle between the former shaped the concept of civil rights and the later the concept of political right. Thus the concepts of civil and political right along with the rule of law have come to constitute the essence of liberal democracy.

As liberalism aims at maintaining the equilibrium by balancing the socio-political forces with economic it opted for welfarism as an inevitable part of the social arrangement and brought in the whole range of economic rights. The social and cultural rights are partly and extension of the civil rights inherent to the notion of pluralism. And the socialist societies under the leadership of Soviet Union accorded primacy to economic rights over the political rights. Both the political and socio-economic rights were finally given place in the Universal Declaration on Human Rights.

2.2 HUMAN RIGHTS:

2.2.1 ORIGIN & MEANING OF HUMAN RIGHTS:

An ancient conception of Human Rights is an old as the ancient doctrine of 'natural rights' founded on natural law.
Nonetheless, the expression ‘human rights’ is of recent origin emerging after the end of the Second World War. Initially, the meaning of the human rights was confined to narrow bounds of more freedom from arbitrary government. The human rights were described as those minimal rights which every individual must have against the state or other public authority by virtue of his being ‘a member of the human family’ irrespective of any other consideration.\footnote{Paranjape N. V., Role of Directive Principles(1974) p.8}

Soon it is realised that the awareness and realisation of human rights not only as negative restriction on the state but as positive obligations of the state for creating an environment of dignified life for a man was essential. Hence, the human rights have become a prominent parameter of a society based on law and justice.

Human rights have become one of the central concepts of all laws. There is hardly any branch of law today in which the concept does not get involved in some degree or other. Everyone has the right in all circumstances to be treated with humanity and with respect for the inherent dignity of human person.\footnote{Basu D.D., Human Rights in Constitutional Law (1994) p.5}

Human rights are based on mankind's increasing demand for a decent civilised life in which the inherent dignity of each human being will be respected and protected. Human rights are also
fundamental to our nature without them we cannot live as human beings.

Human rights in ordinary sense mean natural rights. Now they include natural rights as well as social, economic and political rights. By definition, they are universal rights, something which all men everywhere at all times ought to have something of which no man can be deprived of without a grave affront of justice, something which owns to every human being.

The basic text pertaining to Human Rights are classified as under:

1. The Universal Declaration of Human Rights, 1948

2.2.2 THE GENESIS OF HUMAN RIGHTS:

The first documentary use of the expression ‘Human Rights’ is to be found in the charter of the United Nations which was adopted at San Francisco on June 25, 1945. For the first time in the history of mankind, the concept of human rights was enshrined in the
international law and the mechanism for their protection and enforcement was also propounded.

The first concrete step of formulation, the various human rights was taken by the U.N. General Assembly by adopting the Universal Declaration of Human Rights 1948. It consists of preamble and 30 Articles covering both Civil and Political rights and Economic, Social and Cultural Rights. The preamble refers to the faith in fundamental human rights in the dignity and worth of human person and in the equal right of men and women.\textsuperscript{14}

The Universal Declaration of Human Rights is a statement of basic principles. It does not create any legal obligations. It is only a declaration and it is not a law. Its special character lays in the combination of the classical rights i.e. the Civil and Political Rights with modern rights i.e. Social and Economic Rights of the individual, the majority of the rights are classical, they are offered by nature as a necessary condition for human existence. The socio-economic rights created by human ingenuity to make life happier and more fruitful.

Since its adoption, the Universal Declaration has exercised powerful influence both internationally and nationally. Whatever is the legal quality the declaration has set a standard by which national behaviour can be measured and to which nation can aspire.

\textsuperscript{14} Strake, Introduction to International Law (1984) p.350
The deficiency of enforcement was sought to be removed by the U.N. General Assembly by adopting in 1966, two covenants for the betterment of Human Rights:

1. The Covenant on Civil and Political Rights.

While the former formulated legally enforceable rights of the individual, the later were addressed to the states to implement them by legislation. The two Covenants came into force in December 1976 after the requisite number of member states ratified it.

The enumeration of the human rights is being continuously enlarged by judicial interpretations, both at International and National level, they can be broadly classified into following two types:


Civil and Political Rights are traditional rights of individual as against the state. They reflect the *laissez faire* doctrine of non-interference.

Socio-Economic and Cultural Rights would be jural rights only when implemented by appropriate legislation. Until then, they are in nature of ideals to be by the state because many of these rights such as the right to decent standard of life depend on a standard of
economic prosperity, these rights are of subsequent creation and growth and founded on the status of individual as a member of a society and they thrive on positive contribution of society.

The two covenants amplify and define both the categories of rights mentioned and foreshadowed in the Universal Declaration whereas the declaration was only a beacon light and possible spur to legal reform, the covenant recognises the legal basis of the rights and their existence. But they fall considerably short of creating judicial machinery for enforcement of right.

Government who are parties to the covenant on Economic, Social and Cultural rights undertake to submit to the Secretary General of United Nations reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognised in the covenant. These reports may reach Human Rights Commission for study and appropriate recommendations.

Both the covenant does not create a right in the citizen of any state to complain of violation of his rights by his own government. The deficiency is sought to be met by an optional protocol to the International Covenant on Civil and Political Rights. A state which becomes a part to the optional protocol would thereby confer on the human right committee the right to receive and consider complaint from individual.
2.2.3 RIGHT – BASED THEORIES:

Rights are in ‘human rights’, animal rights, moral and political rights have assumed a central place in contemporary jurisprudence. A modern trilogy (introduced by Dworkin) of legal and moral theories which are right-based, duty-based and goal-based has emerged. Waldron provides an example which illuminates this distinction. We are opposed to torture. If our opposition is based on the suffering of the victim, our approach is right-based. If we believe that torture debases the torturer, our concern is duty-based. If we regard torture as unacceptable only when it affects the interests of those other than the parties involved, our approach is utilitarian goal-based.

Our principal concern is, of course, with right-based theories. Rights, in modern legal theory, are taken very seriously. In particular, Professor Dworkin’s ‘rights thesis’ argues for the primacy of rights over considerations of the general welfare. This view of ‘rights as trumps’ justifies their protection on a complex exclusion of ‘external preferences’, ‘Personal’ and ‘external’ preferences. The former refers to those things that I want for myself; the latter are the things I want for others. Dworkin argues that when we seek to improve the general welfare, external preference should be excluded—because they undermine the ‘basic right to equal concern and respect’ which, in his theorem, is a fundamental political right—a postulate of political morality.
It can be concluded in this chapter that the concept of human rights has been described as ‘one of the greatest inventions of our civilisation (which) can be compared in its impact on human social life to the development of modern technological resources and their application to medicine, communication and transportation.

The idea of human rights has passed through three generations. The first generation rights were of the seventeenth and eighteenth-century Civil and Political rights mostly negative in nature. The second generation rights consist in essentially positive rights viz. concerned with economic, social and cultural rights. The third generation rights are primarily concerned with collective rights which are foreshadowed in Article 28 of the Universal Declaration of Human Rights which declares that ‘everyone’ is entitled to a social and international order in which the rights set forth in this declaration can be fully realised’. These ‘solidarity’ rights include the right to social and economic development and to participate in and benefit from the resources of the earth and space, scientific and technical information (which are especially important to the Third World), the right to a healthy environment, sustainable development, peace and humanitarian disaster relief.
2.3 RIGHTS UNDER THE INDIAN CONSTITUTION:

The framers of Indian Constitution were inspired by the ideals of international peace and respect for human rights. From the beginning it was understood that ‘the real problems of the future will be economic and social and it would be wrong to build the constitution in a manner which has no relation to the realities to tomorrow. And so the Assembly which derived from the people all power and authority drafted perhaps the world’s longest written constitution consisting of justiciable and non-justiciable rights, a feature borrowed from the Irish Constitution.

The justiciable rights which have taken shape in Part III of the Constitution are named as Fundamental Rights whereas the non-justiciable rights are incorporated in Part-IV of the Constitution as Directive Principles of the State Policy.

The Constitution of India was drafted during 1947 but it was adopted in the climate of the deliberation for the Universal Declaration (1950) hence the framers of the Indian Constitution were gravely influenced by the concept of human rights which were subsequently imported in the International Covenant.

The concept of human rights as envisaged in the indisantract essentially has political, social and economic connotations. It is founded on the bedrock of equality of all men, freedom and liberty for all men; Guarantees of political and civil rights minus social and
economic rights are incomplete and insufficient to satisfy the spirit of man. The social and economic rights are primary while the civil and political rights are higher. If the former constitute the foundation of the building the later constitute the elevation.