CHAPTER I

Introduction: Concept of Human Rights
CHAPTER - 1

INTRODUCTION: CONCEPT OF HUMAN RIGHTS

The issues of human rights have become a global phenomenon in the contemporary world as people started showing their concern towards the miseries and humiliation, of another fellow human being. The importance of contemporary international relations is attached to the promotion and protection of human rights. To this end efforts have been made to protect and promote individuals and collective human rights by various Governmental and Non-Governmental Organizations (NGOs) all over the world. However, despite such efforts, the fact remains that there are continued reports of human rights violations each day in most countries of the world. Therefore, there seems to be a contradiction between what is preached and actually practiced. Today, there is a need to create awareness about human rights in most parts of the world. In this context, the emergence and role of NGOs and other agencies at regional, national and International levels for protection and promotion of human rights among the people in different societies, are of immense significant.
The International concern for human rights originated only after Second World War but the philosophy underlying the concept is centuries old. The idea of human rights is understood to have been as old as the history of human civilization, which was traditionally known as "Natural Law”. The idea of rights for men, women and children were seen in some form or the other in all culture and societies. Although several movements might have started to secure certain basic rights for individuals in different period of human history, the roots of human rights of individuals can, however, be traced out from humanitarian traditions, the unceasing struggle for human freedom and equality of individuals in all parts of the world and the historic pronouncements of philosophers, political leaders and Statesmen in different centuries in general and in 20th century in particular. Indeed, humankind has made history through the struggle for freedom from exploitation and subjugation. In course of these struggles all throughout history, the concept of rights, which every human being should enjoy by virtue of their very humanity, was developed. From here it can be clearly pointed out that, since those days people had some ideas about inherent rights, known as Natural Laws. But the term “human rights” was in a rudimentary form, which was developed in the 20th century after the adoption of the Universal

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Declaration of Human Rights by the United Nations on 10th December 1948.2

There are many definitions as regard to the meaning of human rights. The United Nations Center for Human Rights has defined human rights as, "Those rights, which are inherent in our nature and without which we cannot live as human beings".3 D. D. Basu explained the stages of development of the concept of Human Rights. According to him, "The expression of human rights had its origin in International Law relating to the development of the status of an individual in the international legal system, which was originally confined to the relation between sovereign states, who were regarded as the only person in International law. For all practical purposes, the genesis of contemporary human rights is not older than Second World War though the concept of individual having certain inalienable rights as against state had its origin in the dim past. Thus, the concept of human rights, embodying the minimum rights of an individual versus his own state is as old as Political Philosophy. For instances, D. D. Basu’s definition of human rights include “those minimum rights which every individual must have against state or other public authority by virtue of his being a member of human family, irrespective of any other

consideration”. He further added that the concept of human rights is as old as the ancient doctrine of Natural Rights founded on Natural Law. Therefore according to Basu, it is only Natural Rights that eventually led to the development of modern concept of human rights. According to Jack Donnelly human rights are literally, the rights that one has simply because one is human. In the words of R. J. Vincent, “human rights are the rights that everyone has, and everyone equally, by virtue of their very humanity”. David Selby gave a similar kind of definition, which says, “human rights pertain to all persons and are possessed by everybody in the world because they are Human Beings, they are not earned or inherited, nor are they created by any contractual undertaking”. Susan Moller Okin, defines human rights as a “claim to something (whether a freedom, a good or a benefit) of crucial importance for human life”. According to her, there are at least three kinds of important human needs - to basic physical goods, to physical security, to being treated with respect”. In the words of Cranston, “human rights are forms of moral rights and

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they differ from other moral rights in being the rights of all people at all
time in all situations".9

Thus, there seems to be no specific and precise definition of
human rights as it is a dynamic concept that changes and develops
with time. In simple words, human rights can be said to be the
inherent rights of every individual. These rights are inalienable in a
sense that every individual is born with it. Therefore, the difference in
race, sex, language, property, religion, etc., does not distinguish
anyone from enjoying these rights. Since all human beings belong to
the family of humankind, every human being should be able to enjoy
these rights as rights are meant for all. The ultimate human aspirations
are to be able to survive, develop to one's fullest potential and live
with dignity as a human being. These rights include right to life,
freedom, dignity and justice, which need to be protected by the
state so as to enable the people to enjoy the same.

As said, human rights are, literally, the rights one has simply
because one is human. Human rights, because they rest on nothing
more than being human, are universal, equal, and inalienable.10 It
also implies availability of such conditions, essential for the fullest

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10 Donnelly, Jack, n. 5, p. 3
development and realization of the innate characteristics which nature has bestowed men and women with, as human being; they are essential to ensure the dignity of every person as a human being. Irrespective of one’s place of birth, race, religion, color, sex, or any other such factor, each human being has an instinct to live and not be deprived of life arbitrarily. All human being, instinctively wish to move about freely, express their thoughts, develop fullest human personality, etc. Likewise, there are need for food and shelter. This necessitates a social system, where individual humanness finds expression and their day to day needs are satisfied.

An analysis of various definitions of human rights as discussed suggests that atrocities of any form committed by any organization or force towards the weaker section of the society irrespective of its objectives and justification, is considered to be violation of human rights. The violation of human rights also includes suppression of congenial atmosphere and environment wherein individuals and groups can develop to the fullest.

DEVELOPMENT OF THE IDEA OF HUMAN RIGHTS

Historically speaking, it is found that human rights emerged from the concept of Natural Law. The idea of human rights has been most
popular among the scholars in Western societies. Though various nations and regions of the world have equally supported to the concept of human rights, the credit often goes to the Western thinkers, as they were the first to regard the idea of human rights in the modern literature. The ancient Greeks were known to be the originators of the western philosophical tradition and therefore also of its tradition of human rights. They believed that god exercised power in human society, which was based on law, and this law stands above the obligations imposed by the rulers of the community, which is known as Natural Law.11 "Natural Law" according to International Encyclopedia of the Social Sciences, means a law that determines what is right and wrong and that has power or is invalid by nature, inherently hence everywhere and always.12 Natural law consists of rules founded on the primary instincts of man as modified by his inborn perception of what is right or wrong, it follows that natural rights constitute the primary rights and obligations of men to one another as soon as they begin to live in society, that is, in association with other. Since the rules of natural law are of universal application, natural rights also inhere in every human being, in all ages and in all times.

The Stoic philosophers in the Hellenistic period formulated the doctrine of natural rights as something which belong to all men at all times: the rights were not particular privileges of citizens of particular cities, but something to which every human being everywhere is entitled by virtue of being human and rational. The stoic argued that nature provided the best guidance for people's behaviour and that people should do their best to devise an ethical and moral system based upon nature. Further, the stoics argued that because nature had given all individuals reasons (intelligence), all individuals should realize that by virtue of being human, they are all brothers and should treat one another with respect. According to stoics both slave owner and slave are equal because they belong to the same species that is human being. Therefore, the concept of having the same rights for all humankind is the beginning of modern theories of human rights.15

13. Stoics belong to the ancient Greek School of Philosophy established by Zeno (335-263 B.C.) another Greek. They attracted many adherents, and flourished for centuries, not only in Greece, but later in Rome.
14. Hellenistic period begins with the rise of Macedon in 355 BCE and Alexander the Great’s conquest. It covers the successor kingdoms established by Alexander’s generals after his death, most notably the tolemaic Dynasty in Egypt, and the Seleucid Dynasty in Asia. The period ends with the death of Cleopatra an Mark Anthony in Egypt in 30 BCE, and the assimilation of Ptolemaic Egypt as a Roman province.
Stoicism\textsuperscript{16} was popular among intellectuals in the Roman Empire, more particularly Marcus Tullius Cicero. In Roman law a clear emphasis is made on the difference between nation law and the law which is actually common to all nations known as \textit{jus gentium}. The expression "\textit{jus gentium}" developed in more recent times into the concept for the rules of law regulating relations between states. On the other hand, the law that the nature has established is \textit{Jus Naturale}. The term "\textit{jus naturale}" has been defined by Cicero, a great Roman Jurist, as one eternal and immutable law which will apply to all people at all times and God is the source of this law.\textsuperscript{17} After the fall of the Roman Empire in the fifth century A.D., ethical philosophy languished and overshadowed by discussions of Christian morality and ethics. Further, the concept of natural law was also elaborated through the works of the Christian theologians who advocated a belief in the law of the existence of God.\textsuperscript{18} During that time St. Augustine (354-430) advocated a principle that a law, which violated Justice, was in principle invalid. In the Middle Ages St. Thomas Aquinas, reaffirmed the central idea of the stoics that the idea of a law superior to the external authority of the state. According to St.

\textsuperscript{16} Stoicism was one of the new philosophical movements of the Hellenistic period. The term Stoicism is derives from the Greek word "Stoa" referring to a colonnade, such as those built outside or inside temples, around dwelling-houses, gymnasia, and market-places. (the name derives from the porch (stoa poikile) in the Agora at Athens decorated with mural paintings, where the members of the School congregated, and their lectures were held.


Thomas Aquinas, the state is subject to that higher law which determines the relationship of the individual to the state. Further, he justified by saying that the state is in its service to the individual and that all political authority is derived from the people and laws must be made by the people or their representatives. According to him any order or authority which contravene the natural law, could be disobeyed, for unjust law has no moral validity. Further, this led to the establishment of the doctrine of natural rights and by the end of the middle ages the concept of natural rights of men became well established.19

The most important event that took place during this period was the development of an English legal tradition, arguing that all men had certain rights vis-à-vis the government. This tradition began with the signing of the Magna Carta also known as “the Great Charter of the Liberties” by King John I of England in 1215. The Magna Carta stated that Englishmen had certain basic rights which even the King could not violate: “No free man shall be taken or imprisoned, disposed, outlawed, exiled, or damaged without lawful judgement of his peers or by the laws of the land”.20 Magna Carta is the first official documents in the legislation of human rights but it obtained certain

concessions and freedoms from King John I only for the benefit of feudal lords.

The doctrines of natural rights received further impetus at the hands of the great protagonists of the theory of social contract in the seventeenth and eighteenth centuries, particularly John Locke and Jean Jacques Rousseau. In 1690, an English Philosopher and politician, John Locke (1632-1704), published Two Treaties on civil government, in which he advocated rights for human being based on natural law. He envisaged the concept of an original state of nature where no national community or state power had been recognized and where all people have the same rights and obligations in common. Locke viewed this state of nature as providing everyone an entitlement of defending his right to life, freedom and property. This is followed by the organized community which is established by means of a social contract. The primary object of this community is to confirm and protect these individual rights. For this purpose the individual need not abandon more of his original rights in the natural state than necessary to organize the community. Those individual rights, which have not been abandoned, still exist and they are eternal, unforfeitable, and inviolable. He states the case for human natural rights dwelling on the explanation of the relationship between state and society. According to Locke, all people have reason, and this reason should tell every
human being not to harm others as all human beings are created by the same divine force, and therefore, all shared certain basic rights, which are "Life, Liberty, and Estates". Subsequently, such rights were incorporated in the constitution of many Countries of the world. For instance, Article 21 of the Indian Constitution guarantees the most important right that is, the right to life. From the Indian perspective an individuals' right to life as enshrined in the Constitution means that no person shall be deprived of his life and personal liberty except according to the procedure established by law. The right to life was also emphasized by Justice Field of the US Supreme Court who once said:

By the term 'life' something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by amputation of an arm or leg or putting out an eye or the destruction of any other organ of the body through which the soul communicates with the outer world. The deprivation not only of life but of whatever God has given to everyone with life, for its growth and enjoyment, is prohibited by the provision in question if its efficacy be not frittered away by judicial decision.21

According to Locke, right to liberty meant that no person should be held against his or her will; a right to estates meant a right

for individuals to have property and possessions. Despite the apparent universalism of natural rights, liberties and right to estates, etc., his philosophy provided justification for these rights and freedom only for upper-class males. Women, wage-labourers, menial workers of either sex, whatever their race or color and of course non-Europeans were not entitled to be rightholders. The Lockean formula of right to "life, liberty and property" was largely concerned with protecting the individual person against governmental power and a government which does not protect them is a bad government and may be overthrown or ignored. Though Locke's philosophy of social contract is full of contradiction, it was Rousseau who gave a kinetic impetus to the doctrine by emphasizing that the sole justification of the state, which derives its authority from the people, was to guarantee the natural rights of man, of freedom and equality.

The theory of natural rights entered into the realm of constitutional realism with two revolutionary documents, namely, the American Declaration of Independence and the French Declaration of Rights of Man. The Bill of Rights adopted in the State Constitution of Virginia in 1776 was considered to be the first declaration of rights in a written Constitution as the basis and foundation of government. The impress of the doctrine of "natural rights" is to be found in the

22. Lewis, James, R. and Skutsh Carl, n. 15, p. 748.
preamble of this declaration: “All men by nature are equally free and independent and have certain inherent natural rights of which when they enter society, they cannot by any compact derive or divest their posterity”. In the same year (1776) on July 4, Thomas Jefferson (1743-1826) wrote in the American Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their creator with certain unalienable rights that among these are life, liberty, and the pursuit of happiness”. Jefferson and his fellow supporters of independence from England felt that American Revolution was justified because King George III had violated their basic human rights. The American Declaration of Independence was elaborated by the United States Constitution in its first ten amendments, called the Bill of Rights which stated that Americans possessed certain basic rights including the right to speak freely, meet freely, worship as they pleased, bear arms, and be free from unreasonable arrest or searches of their home. The American Declaration of Independence (1776) followed by Constitutional amendments or Bills of Rights contained fairly exhaustive guarantees for the rights of man; but in practice their application was largely confined to those who constituted what was abbreviated as WASP (White Anglo-Saxon Protestants). As slavery continued to be part of

23. United Nations, n. 18, p. 139.
the system, the blacks of African origin were referred to as "Negro" and not as man. It was in 1864 that slavery in America was legally abolished after a bitter civil war which threatened the unity of the United States.  

Inspired by the same ideals, the leaders of the French Revolution formulated the Declaration of the Rights of Man and the Citizen (1789), which stated that "Men are born and remain free and equal in rights" and that "the aim of every political association is the preservation of the natural and inalienable rights of man". All these expressly acknowledged and recognized the inherent rights of man, the human right. Thus, we find that the early developments in the field of human rights were the result of historic pronouncements of statesmen, philosophers, political leaders and the unceasing struggle for freedom and equality in all parts of the world. But here again, Rights of Man and of the Citizen were meant only for the French citizens. The emphasis on liberty, equality and fraternity was there because until the French Declaration, the so-called "natural rights" were enjoyed only by those who belonged to royal/noble and feudal families and not the common people. French Declaration included the common people of all social status, but here again women and

non-Europeans were excluded.\textsuperscript{27} The theory of natural rights was opposed by many thinkers. Above all others, Jeremy Bentham, the founder of the philosophy of utility argued that the doctrine of natural or human rights was based upon imaginary wishes. According to Bentham, rights came from laws, and people, rather than nature, invented those laws. The doctrine of natural law compels a man, on the dictates of his conscience, to take arms against any law which he may happen to dislike. Bentham asks his opponents to explain what sort of government can survive in face of an attitude of this kind. According to him, it is the principle of utility which promotes the greatest possible number of people that affords the only clue to guide a man.\textsuperscript{28}

During the 19th Century, the emergence of “humanitarian intervention” in cases where a State committed atrocities against its own subjects, contributed to a clearer understanding of human rights. Great Britain, France and Russia against the Ottoman Empire can be used an example regarding humanitarian intervention in 1827 in order to bring to an end the sufferings of the Greek population under Turkish rule. The independence of Greece in 1830, the numerous interventions undertaken by the European powers to end massacres

\textsuperscript{27} K. P. Saksena, n. 25, p. 5.
\textsuperscript{28} Thamilmaran, V.T., n. 17, pp. 33-34.
of Christians in Syria (1860), to bring relief to the persecuted population in Crete (1886-8), and in the last quarter of the 19th Century to end the persecution by Turkey to the Christian population in various Balkan countries under Turkish sovereignty\textsuperscript{29} are some example of humanitarian intervention. The emergence of "humanitarian intervention" further reflected the growing international concern against the wanton denial of justice.

With the establishment of the League of Nations after the First World War, human rights were further developed in the International sphere. The League of Nations, did not mention "Human Rights" explicitly in the Covenant but the Organization was alive to the task of seeking to protect the rights of people in two particular spheres, namely, the minorities and persons inhabiting the colonies of the defeated powers. Besides these, the League was active on the protection of worker’s rights and indeed the goal of fair and humane conditions of labour for man and children, which was put into practice through International Labour Organization (ILO) since its inception in 1919. Now it works as a specialized agency in the United Nations. The concept of inalienable human rights in the 20\textsuperscript{th} century owes much to the classic Western definition in the writing of John

\textsuperscript{29} Nirmal, C.J., (ed.), \textit{Human Rights In India: Historical, Social and Political Perspectives}, (Institute of India and International Studies, Oxford University Press, New Delhi, 1999), p. 5
Locke, Jean Jacques Rousseau, as well as in the proclamations, such as the English Bill of Rights (1689), French Declaration of the rights of Man and the Citizen (1789) and the American Bill of Rights (1791). These were meant to encapsulate mainly the aspirations of the rising Western bourgeoisie in their successful challenge to the established aristocratic political order. The imprints of these seminal statements are clearly reflected on the Universal Declaration of Human Rights adopted by the United Nations in 1948.30

UNIVERSALIZATION OF HUMAN RIGHTS

The horrors of two World Wars, which killed millions of people, violated people's instinctive belief in certain human rights, helped renew interest in the philosophy that included human rights. The experience of war and the Nazi-atrocities resulted in the widespread conviction that effective international protection of human rights was one of the essential conditions of international peace and prosperity. It was the catalyst that produced revolutionary development in international law relating to human rights. The statesmen of the great powers realized that vigorous attempt must be made to put an end

the scourge of war and bring lasting peace to the world. The attempts to build up an effective world body to safeguard international peace and security started in 1941 and towards this end, various meetings and conferences were held and the world organization was given a final shape at San Francisco Conference held from April to June 1945. At the San Francisco Conference the Charter for International Organization was drawn up. Finally, the objective of peace and of better conditions of life became major issues with the establishment of an International Organization known as the United Nations Organizations, (UNO) on 24th October 1945. This International Organization today is called as the United Nations (UN)

The preamble of the UN Charter, which was drawn up to prevent a recurrence of the destruction and suffering caused by the Second World War (1939-1945) shall have as its objectives, "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..." and Article 1, paragraph 3, of the UN Charter establishes the principle that international cooperation is to be sought in solving international problem of an economic, social, cultural or

humanitarian Charter, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. This article advocates that human rights are universal and there can be no discrimination with regard to race, sex, language, or religion. In addition, Article 13 states that the General Assembly shall initiate studies and make recommendations for the purpose of “assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. It further says that efforts should be made to create awareness on human rights where it is found to be lacking or deprived of their rights. Article 55 of the Charter provides that “the United Nations shall promote universal respect for and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”. As mentioned earlier in Article 1, para 3, about the role of nation states in advocating human rights, this Article clearly emphasized the importance of human rights and that United Nations itself will take up the responsibility in promoting human rights. Whereas Article 56 provides that “all members pledge themselves to take join and separate action in cooperation with the organization for the achievement of the purposes set forth in Article 55”. This Article says

that all member states should strive towards achieving the objectives laid down in Article 55 on the issues of human rights. Article 62 empowers the Economic and Social Council (ECOSOC) for the purpose of promoting respect for and observance of human rights and fundamental freedoms for all". ECOSOC which is under the authority of General Assembly is the principle organ of the UN with responsibility in matters of international, economic and social cooperation, and promotion of universal respect for, and observance of human rights. Finally, one of the basic objectives of the trusteeship system, as set forth in Article 76, is "To encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the people of the world". This article calls for every rational being to strive towards a mutual respect for human rights without any distinction or discrimination whatsoever.

THE ADOPTION OF UNIVERSAL DECLARATION OF HUMAN RIGHTS

The General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights (UDHR) on 10th December 1948 as a common goal for all people, all nations and every individual and every group in society. The UDHR is the

34. Bajwa, G. S., n. 2, pp. 51-52.
foundation of contemporary international human rights law and the touchstone of the global human rights movement. Its preamble states that the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world and also member states have pledged themselves to achieve in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms. It adds that a “common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge”. In 1950, the General Assembly invited all member States and interested organizations to observe 10th December, as Human Rights Day. The main purpose of the anniversary is to draw attention of the people and remind them about the principles enshrined in the Declaration. This day is celebrated in all Countries of the world as an occasion to recall many serious violations of human rights and to reaffirm the solidarity to fight against such violations.

The Universal Declaration of Human Rights containing 30 articles make up the body of the Declaration and enumerate the rights of all human beings such as freedom from arrest and detention without

trial, freedom of movement, freedom of association, freedom of expression, freedom to participate in the cultural activities of the State, freedom to basic education, freedom to form family and protection of family rights, right to nationality, right to property, right to participate in political life of a country, and freedom to seek asylum in other countries. These articles encompass Civil and Political Rights and Economic, Social and Cultural Rights. This Declaration is a document that aims to protect human rights by serving as human rights proclamation to which, States and individuals are morally obligated to respect. The contemporary statement of human rights is the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948, in order to protect and to promote respect for human rights.

In 1966, the United Nations adopted and recommended for ratification of two Covenants on human rights, one setting forth the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Together with the Universal Declaration, they are commonly referred to as the International Bill of Human Rights. The three documents namely UDHR, ICCPR and ICESCR deals with human rights and fundamental freedoms. Since the Covenants are international legal instruments, the Member-States of
the United Nations, who are parties to the Covenant must accept all major obligations. They bind themselves to bring national law and practice in line with the provisions of the Covenants. They are also answerable to the international community by reporting regularly on what they have done to ensure that the rights proclaimed in the Covenant are being respected and enjoyed and on the progress they have made towards this end.

The Preamble and articles 1, 3 and 5 of the two Covenants are almost identical in a sense that each Covenant recalls the obligation of all states under the United Nations Charter to promote human rights, as well as reminding the individual of his responsibility, to strive for the promotion and observance of those rights and recognizes that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying Civil and Political Rights, as well as Economic, Social and Cultural Rights.

Both, ICCPR and ICESCR state in Article 1 that the right to self-determination is universal, and call upon States to promote the realization and the respect of that right. Both Covenants state that “all people have the right to self-determination” and add that “by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development”. Again
Article 3 reaffirms the equal right of men and women to the enjoyment of all human rights. Article 5, in both cases, provides safeguards against the destruction or undue limitation of any human right or fundamental freedom, and against infringement of a right or freedom or its restrictions to a greater extent than provided in the Covenants. It also prevents States from limiting rights already enjoyed within their territories on the ground that such rights are not recognized, to a lesser extent, in the Covenants. The UDHR has provided a model for many subsequent international and regional human rights Treaties and Conventions, and elements of the UDHR have been incorporated into the national Constitutions of many Countries. Hailed as the “International Magna Carta” by Eleanor Roosevelt, the former American First Lady who chaired the Human Rights Commission that drafted it regarded UDHR as the 20th most important human rights document.\footnote{Lewis, James and R., Skutsch, Carl, n. 15, p. 926.} The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were signed and ratified by India in 1979. Therefore, India agreed to these human rights standards, and to provide each and every citizens with these rights. Although the UDHR has been in existence for over fifty years, yet not everyone enjoys them. In many countries, these rights have been guaranteed by governments in appropriate law, while in other countries, the rights
are guaranteed by law, but are ignored in practice. As a result, human rights abuses continue throughout the globe.

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted and opened for signature, ratification and accession by the United Nations' General Assembly Resolution 2200A (XXI) on 16 December 1966. It entered into force on 3rd January 1976 in accordance with Article 27. Article 6 to 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) focuses on issues such as food, education, health and shelter. These basic Human Rights are expressed in such a way that everyone understands it and accepts it as a desirable goal by all Countries. The implementation of law was required in order to make ICESCR a reality for all. It also emphasized that the member-state shall enjoy these rights without any discrimination. The implementation is provided through a system both of state reporting as well as report by United Nations specialized agencies such as the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO), the World Health Organization (WHO), and the Food and Agriculture Organization (FAO) on the
effects of policies and programmes on economic, social cultural Rights falling within the scope of their activities. The ICESCR entered into force in 1976 when, by ratification or accession, the number of states parties had risen to 35.37

In 1978, ECOSOC established a 15-member sessional working group to assist it in considering the reports submitted by States parties. The working group was composed of representatives of States members of the Council who were also States parties to the Covenant. However, in 1985, the working group was transformed by ECOSOC into a Committee on Economic, Social and Cultural Rights, with 18 members who are experts with recognized competence in the field of human rights serving in their personal capacity. Its members are elected for a term of four years by ECOSOC by secret ballot from a list of persons nominated by the States parties to the International Covenant on Economic, Social and Cultural Rights.

The Committee carries out functions relating to the implementation of the Covenant. It examines reports submitted to it by States parties on the measures adopted by them and the progress made in achieving the observance of the rights recognized in the Covenant, and assists the Economic and Social Council to fulfil its

37. Thamilmaran, V.T., n. 17, p. 58.
supervisory functions relating to the Covenant by making suggestions and recommendations of a general nature based on its consideration of reports submitted by States parties and the specialized agencies concerned. The establishment of the Committee put United Nations to implement the Covenant on lines similar to those which have proved effective with other international human rights treaties: the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and, subsequently, the Convention on the Rights of the Child.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

The General Assembly adopted the Covenant on Civil and Political Rights in 1966. This Covenant came into force on 23rd March 1976. Under the Civil and Political Rights there are 27 articles which set out, certainly in much greater detail than the Universal Declaration, a catalogue of rights and freedom. Article 2 makes it obligatory on a state “to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present
Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Articles 6 to 27 of the International Covenant on Civil and Political Rights (ICCPR) focuses on such issues like the right to life, freedom of speech, religion, and voting. Both Covenants trumpet the extension of rights to all persons and prohibit discriminations of any form. The Covenant has established Human Rights Committee which has authority:

a. to comment on reports to be submitted by the State Parties on the measures they have adopted to comply with their obligations under the Covenant;

b. to investigate complaints that State Parties are failing to fulfil their obligations; and

c. under an Optional Protocol to investigate complaints from victims of such failures.38

This Covenant is regarded as a far-reaching instrument on human rights that unequivocally sets standards for the protection and implementation of human rights and fundamental freedoms. Till date, about 120 countries have ratified the ICCPR, a majority of States have stated to take human rights seriously and place them high in the

38. Thamilmaran, V. T., n. 17, pp. 61-62
agenda; and the 1993 World Congress in Vienna reflected deep concerns of the International community for human rights and highlighted their Universality yet the gross violations against human rights and Fundamental freedom of individuals are still being committed all over the world particularly in Third World Countries.

THE OPTIONAL PROTOCOL

The Optional Protocol is an adjunct instrument to the Covenant, which entered into force in 1976 at the same time with the Covenant. The Optional Protocol enables the Human Rights Committee established under the Covenant to receive and consider communications from individual claiming to be victims of violations of any of the rights set forth in the Covenant. In practice, the Committee also accepts communications from the individual’s legal representatives or from close family members, if the family is not in the position to communicate personally. The committee considers the communication from an individual only after the matter has been placed before the national courts or competent administrative authorities. The state against who complain is made must be a party to both the Covenant on Civil and Political Rights and the Optional
Protocol. After a communication has been declared admissible, the committee in closed session examines the communications and discusses the merits of the case. When the Committee has finished considering the individual's complaint and the state party's reply, it can make its views known whether or not the rights in the Covenant have been respected.

To sum up, it may be recalled again that Article 1 of the Universal Declaration of Human Rights lays down the philosophy upon which the declarations is based that, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". Article 2 sets out the basic principle of equality and non-discrimination as regard the enjoyment of human rights and fundamental freedom. Article 3 to 21 deals with the Civil and Political Rights and Articles 22 to 27 deals with the Economic, Social, and Cultural Rights. The concluding Articles 28 to 30 recognize that everyone is entitled to a social and international order in which all human rights and fundamental freedoms can be fully realized and stress the duties and responsibilities which each individual owes to the community.

The adoption of two Covenants and Optional Protocol was quite an important achievement for United Nations that instill some enthusiasm about the human rights and in that enthusiasm the United Nations declared 1968 as a year of Human Rights. The major event of that year was the proclamation of Tehran, made at the International Conference on Human Rights, and reaffirmed faith in the principles of the Universal Declaration and other international instruments. According to the proclamation, the Universal Declaration of Human Rights constitutes an obligation for the members of the international community, and states, a common understanding of the people of the world concerning inalienable and inviolable rights. Therefore, it urged all peoples and governments to dedicate themselves to the protection and promotion of internationally accepted principles of Human Rights.

HUMAN RIGHTS IN INDIA

In India references have been found on the basic human rights in recorded history and ancient scriptures though the exact term “Human Rights” was not used. There are many Indian thinkers who opined that the history of human rights and fundamental freedoms did not begin with the Magna Carta signed by King John of England in 1215 nor did the world come to know of them for the first time
through the endeavors of Locke, Rousseau and Jefferson or the proclamation of the Declaration of Independence by the representatives of the Thirteen North American Colonies in 1776, and the adoption of the Declaration of the Rights of Man and of the Citizen by the National Assembly of France in 1789. Therefore, it may not be proper to say that the idea of human rights was started in the West. No doubt, the Western thinkers were the first to contemplate the idea and used the term “human rights” in modern forms. Indeed, human rights jurisprudence has always occupied a place of prime importance in India’s rich legacy of historical tradition and culture which is evident in the prevalence of different cultures, traditions, faiths in India. The fact is that what the West has discovered about human rights, India had embedded the same in its deep-rooted traditions since time immemorial.

During the course of British rule the philosophy of human rights in the modern sense took place in India. The national struggle for freedom was an attempt to secure basic human rights for all the people which resulted in the incorporation of human rights in the Constitution of India (January 1950). The historical account of ancient India shows that human rights were as much visible in the ancient Hindu and Islamic civilizations as in the European Christian civilization. During the Ancient period, lives of the people were not regulated by
the law of the State but by customary rules known as Dharma. The term Dharma means to uphold, supports and nourishes the society.\textsuperscript{40} Dharma is believed to be a theory of higher moral law which is above positive law embodying certain values of universal validity like Dharma (righteousness), Artha (wealth), Kama (desires) and Moksha (salvation), with a view to establish a harmonious social order by maintaining a balance between inner and outer, spiritual and material aspects of life. They involve 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 King or his subject. It maintains stability of the social order and promotes well-being and progress of humankind.\textsuperscript{41} Thus, Dharma asserts to oneself good conscious and conscientious principles that spring from and aims at increasing one, happiness and well-being. The Vedas\textsuperscript{42} and Puranas contain basic principles of Dharma, Artha, Kama and Moksha. Dharma was practically dominating other aspects of Indian life in the past. It influenced substantially social, economic and political life and seems to have moulded and wielded into a social order which was a unified configuration of ideas, ideals and practices that are mostly


\textsuperscript{41} Sharma, Gokulesh., n. 3, p. 59.

\textsuperscript{42} The metrical religious works of the ancient hindus, offering guidance, inter alia, on religious and social obligations. These constituted the base on which was built the Hindu Law.
ethical as well as spiritual. The fundamental principles propounded in the Vedas aim at securing happiness to all, which constitute Dharma. These were all basic human rights found in the Smritis and Puranas in various rules and regulations, customs and usages. Anything that goes against these principles was rejected as invalid. The principles of Dharma show that human rights are valuable and eternal. These are identified and recognized in Indian civilization from time immemorial as the basic conditions for peaceful and progressive life. These are the values included in the human rights which are also found in the Universal Declaration of Human Rights and also in various Fundamental Rights contained in part III of the Constitution of India. It is Dharma which has impelled men since vedic ages to strive for “righteousness”. The philosophy expounded by the saints of the vedic time is nothing but a reinstatement of Natural Law with religious fervour to enthuse people towards the path of Dharma, enlightenment and unity. It is this higher law of morality, justice and righteousness, which has been continuously guiding and directing Hindu thought, spirit and action from time immemorial and would continue to mould for the realization of Dharma in a timeless fashion.

The various feudal practices prevailing during pre-independence was almost similar to slavery. In some of the Princely States, labourers were not allowed to leave their area of work in
search of new and better prospects. They were tied down for life. Involuntary servitude and child labour were rampant and the women were the silent sufferers. Landlordism was at its zenith. Untouchability flourished without any qualms. The majority-minority tussle, resulting in the vivisection of the country, had left its imprint on the polity and society.  

This was the context in which the founding fathers of the Indian Constitution set on their task of drawing up an elaborate scheme of rights which was incorporated in the Fundamental Rights and the Directive Principles of State Policy covering almost the entire principles of Universal Declaration of Human Rights. The first set of rights enunciated in Article 2 to 21 of the declaration are incorporated under the Fundamental Rights Articles 12 to 35 of the Constitution and the second set of rights enunciated in Articles 22 to 28 of the Declaration are incorporated under Directive Principles, Articles 36 to 51 of the Constitution.  

It further led to the realization that human rights have a significant place in the national context.

The Fundamental Rights adopted by the Constitution of India include Right to Equality and Prohibition of Discrimination on grounds

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of caste, religion, sex, birth, etc., the Right to Liberty, the Right of Speech and Expression, the Freedom of Association, Religious Freedom, Protection against double prosecution and conviction for the same offence, and abolition of untouchability. It may be noted here that the Constituent Assembly while drafting and shaping the Constitution of India seemed to have incorporated the principles of Universal Declaration of Human Rights. Thus, final shape was given to the Indian Constitution on 26th November 1949 and it came into force on 26th January 1950.

The Preamble of the Constitution declared India to be a Sovereign, Socialist, Secular, Democratic, Republic. The word Democratic denotes that the Government gets its authority from the will of the people. The people elect the government, a body comprising the representatives of the people. Thus the power to exercise legal as well as political vests in the people. It gives a feeling that they are all equal irrespective of their race, religion, language, sex and culture. The Constitution of India, in order to achieve the stated objectives, has given a special place to the Chapter on Fundamental Rights in Part III and Directive Principles of State Policy in Part IV of the Constitution.\textsuperscript{45} Fundamental Rights were deemed essential to protect the rights and liberties of the people against the

\textsuperscript{45} Bajwa, G. S., n. 2, p. 183.
encroachment of the power delegated by them to their Government. They are limitations upon all the powers of the Government, legislature as well as executive and they are essential for the preservation of public and the private rights. Therefore, the Fundamental Rights guarantee certain rights to the individuals, whereas, the Directive Principles gives direction to the state to provide some other rights to its people in the specified matters. They together constitute the conscience of the Constitution. But, these rights guaranteed and provided in the Constitution are required to be in conformity with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. In 1979, India adopted the International Covenant on Civil and Political Rights (1966). Hence, it become the duty of India to provide these rights to all its citizens in consonance with the provisions enshrined in these international instruments.

The two Covenants of Human Rights namely Civil and Political Rights and Economic, Social and Cultural Rights are to some extent reflected in the Constitution of India. The realization of Civil and Political Rights was considered as a goal within immediate reach while the Economic, Social and Cultural Rights were regarded as ideals for that country to strive.
INDIAN CONSTITUTION AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

Table 1.1 shows a close similarity of the United Nations Universal Declaration of Human Rights 1948 with the Fundamental Rights of Indian Constitution.

<table>
<thead>
<tr>
<th>Fundamental Rights under the Indian Constitution</th>
<th>United Nations Declaration of Human Rights</th>
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<tbody>
<tr>
<td>1. Article 14 The state shall not deny person equality before the law of the equal protection of the law.</td>
<td>1. Article 7(1) All are equal before the law and are entitled without any discrimination to equal protection of the law.</td>
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<tr>
<td>2. Article 15 (1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.</td>
<td>2. Article (2) All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.</td>
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<td>3. Article 16 (1) There shall be equality of opportunity for all citizens in matters relating to employment.</td>
<td>3. Article 21 (2) everyone has the right of equal access to public service in his country.</td>
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<tr>
<td>4. Article 19 (1) All citizens shall have the right to freedom of speech and expression</td>
<td>4. Article 19 Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</td>
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<tr>
<td>5. Article 19 (1) (b) Right to assemble peacefully without arms</td>
<td>5. Article 20 (1) Everyone has the right to freedom of peaceful assembly and association.</td>
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<td>6. Article 19 (1) (c) Right to form unions and associations</td>
<td>6. Article 23 (4) Everyone has the right to form and to join trade unions for the protection of his interests.</td>
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<tr>
<td>7. Article 19 (1) (d) right to reside and settle in any part of the territory of India</td>
<td>7. Article 13 (1) Everyone has the right to freedom of movement and residence within the borders of each state.</td>
</tr>
<tr>
<td>8. Article 19 (1) (f) Right to acquire, hold and dispose of property.</td>
<td>8. Article 17 (1) Everyone has the right to own property alone as well as in association with others.</td>
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<tr>
<td>9. Article 20 (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence not be subjected to a penalty greater than that</td>
<td>9. Article 11 (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at time when it was committed. Nor shall a heavier</td>
</tr>
</tbody>
</table>
which might have been inflicted under the law in force at the time of the commission of the offence, i.e. no subjection to ex-post facto laws.

| 10. Article 21 | No person shall be deprived of his life and personal liberty except according to the procedure established by law. |
| 10. Article 9 and 13 (2) | No one shall be subjected to arbitrary arrest, detention or exile. Everyone has the right to leave any country, including his own, and to return to his country. |
| 11. Article 23 | Traffic in human beings and beggary and other similar forms of forced labour are prohibited. |
| 11. Article 4 | No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. |
| 12. Article 25 (1) | All persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. |
| 12. Article 18 | Everyone has the right to freedom of thought, conscience and religion, this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. |
| 13. Article 29 (1) | Citizens residing in the territory of India having distinct language script of culture of its own shall the right to conserve the same. |
| 13. Article 22 | Everyone, as a member of society, has the right to social security and its entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each state, of the economic, social and the cultural rights indispensable for his dignity and the free development of his personality. |
| 14. Article 30 (1) | All minorities whether based on religion or language, shall have the right to establish and administer educational institutions of their own choice. |
| 14. Article 26 (3) | Parents have the prior right to choose the to kind of education that shall be given to their children |
| 15. Article 31 (1) | No one shall be deprived of his property save by penalty be imposed than the one that was applicable at the time the penal offence was committed. |
| 15. Article 17 (2) | No one shall be arbitrarily deprived of his property. |
authority of law. Proposed to be deleted as fundamental right and just in the category of a constitutional right.

| 16. Article 32 The right to move Supreme Court by appropriate proceedings for the enforcement of the right conferred by this part is guaranteed | 16. Article 8 Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law. |

From the above table, it can be pointed out that India incorporated most of the provisions of the UDHR in its Constitution so as to promote and guarantee Human Rights and Fundamental freedoms without distinction. Besides India, there are several other countries which have been influenced by the Universal Declaration of Human Rights as explicit references to it are found in the Constitutions of countries like France, Germany, Libya, Indonesia, El Salvador, Costa Rica, Syria, Mauritania and Sudan. Legislatures of Paraguay, Canada, Guatemala, Argentina, Bolivia and Panama have also enacted statutes corroborating the Universal Declaration.

The United Nations sets an international standard for nations and people through the Universal Declaration of Human Rights but it lacks the legal force of an International Treaty. However, countries that have ratified the Covenants are obliged to implement the

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47. Bhat, S. L., n. 43, p. 9
provisions on human rights. Although India is a signatory to the Covenant yet the existence of certain laws and their implementation complying with the provisions of the UDHR are yet to be fully found for which India has been subjected to several national and international criticisms. The Police Act, 1949, Armed Forces (Special Powers) Act, 1958, Disturbed Areas (Special Courts) Act, 1976, Arms Act, 1959, besides these, Maintenance of Internal Security Act 1971, Essential Services Maintenance Act 1981, Conservation of Foreign Exchange and Prevention of Smuggling Activities Act 1974, and National Security Act, 1980⁴⁸ are some of the repressive laws of the Government, which have been criticized for violating the fundamental rights and freedom of the people. The Armed Forces Special Powers Act (1958) enforced in the State of Nagaland as a means to suppress Naga Movement for Freedom and its militancy. The enforcement of the act and its uses by the Indian armed forces and paramilitary forces are alleged to have resulted human rights violations in the State. The implementation and uses of the Act and the consequences thereof particularly in Nagaland will be the main focus of the study in the following Chapters.

⁴⁸ Palia, Arun, Kumar, n. 7, p. 30.