CHAPTER- I

HUMAN RIGHTS : THE CONCEPT AND ITS EVOLUTION

The concept of human rights is a moral vision which is recognised internationally. Since the second World War, there has been a profound change in the international law. A major step has been taken for the first time in history, i.e., the international responsibility for the protection of human rights. In this chapter, the concept of human rights and its evolution in the global as well as national context have been discussed.

THE CONCEPT OF HUMAN RIGHTS

Human rights are conceptually dynamic. That is why, it is difficult to get a single definition of human rights. At the same time it is also true that “human rights may be difficult to define but impossible to ignore”. Human rights, which is a fairly new name was formerly called ‘the rights of man’. Mrs. Eleanor Roosevelt promoted the use of the expression ‘Human Rights’ in the 1940s. The ‘rights of man’ replaced the original term ‘natural rights’ which was logically connected with natural law.

Human rights are basic and inherent rights of all human beings. These rights can be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings. Human rights and fundamental freedoms allow us to develop fully and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. These are the minimal rights of every human being irrespective of any other consideration.
Human rights are understood to represent individual and group demands for the shaping and sharing of respect, tolerance and forbearance in the pursuit of other values. These rights and freedoms are all of the kind to which are ascribed the particular characteristics of being inherent, inalienable and equal. Human rights are a species of moral rights; they are moral rights in which all persons are equal simply because they are human. They are moral in the sense that they are justifiable through a valid moral principle. The moral claims which are inalienable and inherent in all human beings are articulated and formulated as human rights and have been translated into legal rights, established according to the law creating processes of societies, both national and international.

The foundational norm governing the concept of human rights is that of the respect for human personality and its absolute worth, regardless of colour, race, sex, religion or other considerations. Therefore, it may be said that human rights are those fundamental rights to which every man or woman inhabiting any part of the world should be deemed entitled merely by virtue of having been born a human being.

As human rights cover the people of the world as a whole, they become the part of the world social process. After the establishment of the United Nations, the way, a sovereign state treats its own citizens is no longer a matter for its own exclusive determination, but a matter of legitimate concern for all other states and international community. Now, international law contains a code laying down human rights of individuals against the states which exercise power over them. Therefore, the citizens are no longer the mere objects of state compassion, but subjects of legal rights under that law.
CLASSIFICATION OF HUMAN RIGHTS

The French jurist Karel Vasak advanced the notion of "three generation of human rights". These three generations of rights are based on the three normative themes of the French revolution. They are: the first generation of civil and political rights (liberte'); the second generation of economic, social and cultural rights (equalite'); and the third generation of newly called solidarity rights (fraternite'). Vasak's model is a simplified expression of human rights. It is not intended as a literal representation of life in which one generation gives birth to the next and then dies away.

The first generation of rights include the civil and political rights. It conceives of human rights more in negative (freedom from) than positive (right to) terms. It favours the abstention rather than the intervention of government in the quest for human dignity. The first generation rights are included in the Articles 2-21 of the Universal Declaration of Human Rights, 1948 and also in the International Covenant on Civil and Political Rights, 1966. These rights include among others, equality and non-discrimination as regards the enjoyment of human rights and fundamental freedoms, right to life, liberty and security of person, freedom from slavery and servitude, freedom from torture and cruel, inhuman or degrading treatment or punishment.

However, all the civil and political rights cannot be labelled as negative rights. The rights such as security of the person, to a fair and public trial, to asylum from persecution, and to free elections cannot be assured without some affirmative action of government. The core point of the first generation rights is liberty, which safeguards the individual against the arbitrary actions of the states.
The second generation social, economic and cultural rights are conceived in positive terms, requiring the intervention, not the abstention of the State. Articles 22 to 27 of Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights include the second generation rights. Article 22 of the Universal Declaration of Human Rights characterises the economic, social and cultural rights as indispensable for human dignity and the free development of personality, and indicates that they are to be realised "through national effort and international co-operation." Some other second generation rights are: right to social security, right to work, rights to equal pay for equal work, right to rest and leisure.

However, all the rights included in the second generation rights cannot be termed as positive rights. There are some rights included in the second generation, which do not require state intervention, such as the right to free choice of employment, the right to form and to join trade unions, and the right to freely participate in the cultural life of the community.

The third generation rights are solidarity rights or collective rights. Karel Vasak has pointed out that the third generation of human rights "infuse the human dimension into areas where it has all too often been missing having been left to the state or states", and that "these rights can be realised only through the concerted efforts of all the actors on the social scene: the individual, the state, public and private bodies, and the international community."

This category of rights are based on the sense of solidarity which is essential for the realisation of the major concern of the international community such as peace,
development and environment. The third generation rights are still in formation, and so far includes six claimed rights. They are:

1. The right to political, economic, social and cultural self-determination.
2. The right to economic and social development.
3. The right to participate in and benefit from the common heritage of mankind.
4. The right to peace.
5. The right to healthy and balanced environment.
6. The right to humanitarian disaster relief.

The third generation rights express a new conception of national and international life of the human community. Their realization presupposes common and solidarity efforts of all the actors of our social life. All the three generations of human rights are interdependent and complementary to each other. The Vienna Declaration (1993) has also emphasised that as human rights are interrelated and interdependent, they should be promoted in equal manner. The explanation in terms of generation of human rights is purely subjective.

A HISTORICAL PERSPECTIVE

One of the remarkable contributions of the classical, medieval, modern and contemporary social and political thought to the culture and the civilization of mankind should be traced in the reiteration of human rights. Facts demonstrate that the struggle to preserve, protect and promote human rights has remained till this day in each generation of the people belonging to any part of the great human society. The origin and development of human rights have been discussed below.
Though the term human rights is of recent origin, its concept can be traced into very ancient times. The origin of the concept of human rights are usually agreed to be found in the Greco-Roman natural law of stoicism, which held that a universal force pervades all creation and that human conduct should therefore be judged according to the law of nature and in the jus-gentium (law of nations).20 Natural law embodies those elementary principles of justice which were right reason, i.e., in accordance with nature, unalterable and eternal.21

The Greek thinkers developed the idea of natural law and laid down its essential features. The unstability of political institutions and frequent changes in the law and government of small city states made some jurists to think about some immutable and universal principles and that gave them the idea of natural law.22 Heraclitus (530-470 B.C.) was the first Greek philosopher who founded natural law philosophy in the rhythm of events. Socrates, Plato and Aristotle contributed to the natural law theory in Greece. Aristotle (384-322 B.C.) expounded the theory of natural law in clear terms. According to him, the purpose of state, community and law is to enable man to realize good life that is living according to virtue. Besides the philosophers, a group of teachers called Sophists (450-400 B.C.) had focused on ethical and moral values to prepare efficient citizens.23

Zeno (350-260 B.C.) founded the Stoic law of nature (on the basis of Aristotle's theory) and made it identical with law of reason.24 The doctrine of the Stoics was characterized by the affinity it established between the regularity of nature and the general regularity which is incumbent on human existence. Man's reason is a part of the
universal reason. Therefore, when he lives according to nature, it is the moral duty of
man to subject himself to the law of nature.

The idea of Stoics influenced the jurists and statesmen of ancient Rome. Cicero
(106-43 B.C.), the great Roman lawyer and statesman was influenced by the ideas of
the Stoic philosophers. He identified nature and reason and assumed that reason was
dominating force in the universe. In the eyes of the universal law all men are equal. He
thought that there should not be any conflict between the natural law and the positive
law. Natural law is right reason in agreement with nature, from which there can be no
dispensation either by the senate or the people.

In ancient Rome, there were three divisions of law, 'jus civile', 'jus-natural' and 'jus
gentium'. The expression jus gentium develops in more recent time into the concept for the rule of law regulating relationships between states, i.e., international
law which developed the branch of the law of human rights.

In the medieval period the church tried to establish its superiority over the state
by reason and argument rather than by force. That is why, the law of nature was
identified with the law of god and the church became the exponent of natural law.
Saint Thomas Acquinas (1226-1274) was the greatest of the scholastic philosophers of
the Middle Ages. Acquinas distinguished between four different kinds of law: the
eternal, the natural, the divine and the human law. The eternal law is the divine reason
and wisdom directing all movements and actions in the universe. The natural law is
nothing else but a participation of the eternal law in a rational creature. The Divine law
is the law revealed by god through the holy scriptures and recorded in the Old and New
Testaments. The Human law is defined by Acquinas as "an ordinance of reason for the
Acquinas opined that human law is derived from natural law and when it departs from natural law, it is no longer a law but perversion of law.

Renaissance is a collective term used to include all the intellectual changes that were in evidence at the close of the middle ages and at the beginning of the modern times. One of the important characteristics of this period is development of new ideas in all the branches of knowledge. The intellectual and scientific achievements, the conception of nationalism encouraged a belief in natural law and universal order. The new theories denounced the ideas of the dominance of church. Machiavelli, for the first time, declared about the separation of church and state. Hugo Grotius (1583-1645), who is considered as the father of modern international law prepared ground for the secular, rationalistic version of modern natural law. He believed that natural law was rooted in the nature or reason of man. He tried to assert that natural law is independent of God. Apart from Grotius, the other exponents of natural law of this period were Hobbes, Locke and Rousseau.

With the emergence of the scientific age, the natural law theory faced a decline. But towards the end of the nineteenth century and in the twentieth century, its revival took place. The indispensability of values and moral order was felt because of the menace of the World Wars and the decline in standards.

Positivism is a movement against the a priori methods of natural law theorists. The term positivism means, "the law as it is actually laid down, positum has to be kept separate from the law that ought to be." Positivists advocate the theory that the source of human rights is to be found only in the legislative enactments of a system of law
which has sanctions attached to it. Ideas of what the law ought to be have no place in
time and are perceptibly worthless.\textsuperscript{\textdegree}4

Marx did not recognize human rights to be natural and inalienable. He
considered the law of nature as unhistoric and unrealistic. In the ‘Holy Family’, Marx
and Engels stated, “The recognition of the rights of man by the modern state has no
other meaning than the recognition of slavery by the state of antiquity did.” Thus, he
made a connection between the bourgeois society and human rights. Marx opined that
upon the attainment of communism, the concept of human rights would be redundant
because the conditions of social life would no longer have need of such principles of
constraint.\textsuperscript{35}

Thus, Marx and Engels studied the case of rights of man in the context of
prevailing social make up of a country. However, the Russian Revolution of 1917
widened the concept of human rights and “added a new vital dimension of socio-
,economic justice or of the social and economic rights of the people.”\textsuperscript{36} In Marxian-
Leninist–Maoist conceptual framework, human economic rights are given primacy over
political rights. Majority of the UN member states and developing countries have
followed the lead of the former USSR in implementing the International Covenant on
Economic, Social and Cultural Rights, 1966 while the USA refuses to sign and ratify the
Economic Covenant, 1966 even today.

THE CODIFICATION

The codification of human rights by various national governments took place
from time to time in the form of democratic obligations, social and political claims and
immunities. These documents reveal the advancement of human rights in legal formulations. Some of the codified instruments are discussed below.

No other European country illustrates the evolution of a government from absolutism to democracy any better than does England. The English parliamentary system can be traced to Magna Carta. Magna Carta was accepted by King John at Runnymede in 1215. It was enacted by the feudal barons for their own selfish interest. Though it did not intend to assert rights and liberties for all, several of its provisions, among them, the famous clause 39 stating that 'no free man shall be taken or imprisoned......... or exiled or in any way destroyed ..........except by the lawful judgement of his peers or the law of the land', gave expression to the idea of individual freedom and became the symbol of this freedom for centuries to come.

Petition of rights was allowed by Charles the First in 1628. This was a parliamentary declaration which dealt with freedoms of people that nobody shall be taxed without the permission of the Parliament, nobody shall be imprisoned in an arbitrary way, etc.

The traditions of the Glorious Revolution of 1688, with its Act of Settlement and Bill of Rights paved the way for Human Rights thinking even in a monarchy. This Act provided that the king cannot have the right to suspend laws. Moreover, the king was compelled to guarantee free speech and proceedings for members of Parliament. It established the idea of representative government and became a Charter of Liberty for England.
In America, the Declaration of Human Rights consists of the Virginia Bill of Rights (1776), Declaration of Independence (1776), and the Bill of Rights in the constitution of the United States of America (1791).

The Virginia Bill of Rights acknowledges the rights inherent to human beings and that sovereignty is vested in the people—'the government of the people'. It proclaimed and affirmed the rights to property, happiness and resistance. Moreover, it confirmed the inviolability of inherent human rights.

The Declaration of Independence of the United States of America was adopted on the 4th July, 1776. It did not guarantee human rights but proclaimed: "these truths to be self-evident: that all men are created equal, that they are endowed by their Creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness..."

The Bill of Rights is set forth in Article V of the Constitution of the United States of America (1791). It guarantees people, among others, freedom of religion, speech and press, right to assembly, due process of law and equal protection of the law.

The Declaration of the Rights of Man and of the citizens was adopted by the National Assembly of France on 26th August, 1789. This declaration became the working programme of the revolution in France. It contains all the basic elements necessary to secure human rights. It proclaimed: "Men are born and remain free and equal in rights, which are liberty, property, security and resistance to oppression..."

Law is the expression of general will. No person shall be accused, arrested or imprisoned except in the cases and according to forms prescribed by law."
From the nineteenth century onwards the independent states began to recognise human rights through the national constitutions. Thus, with the passing of time human rights issue received an extended acceptance by the constitutional law.

THE LEAGUE OF NATIONS

The League of Nations was established after the first World War (1919) to ensure peace and security in the world. But the Covenant of the League of Nations did not make any specific mention of human rights. Along with the rights of minorities and Mandate system, there was only a secondary expression of human rights. However, the League members were committed to attain certain goals, such as, fair and humane working conditions for men, women and children; the prevention and control of disease in matters of international concern, and the just treatment of native colonial people. The League of Nations could do nothing to stop the later German aggression which burst on Europe as World War II. It ultimately paved the way for the establishment of the United Nations.

THE UNITED NATIONS

The shocking crimes committed against the humanity during the two World Wars caused everyone to think for certain measures to retaliate all these things and to restore the human rights. Roosevelt’s Declaration of 26th January 1941 on the ‘four freedoms’ is considered as the first document of human rights in the recent history. The four freedoms were: freedom of opinion and expression, freedom of worship, freedom from want and freedom from fear. In the message of the Declaration, Roosevelt
opined, "freedom means the supremacy of human rights everywhere. Our support goes to those who struggle to gain these rights or keep them".48

The Atlantic Charter which was signed by Franklin Roosevelt, the President of the United States of America, and Winston Churchill, the Prime Minister of the United Kingdom, on 14th August, 1941 included the four freedoms and added one more freedom, i.e., the need for economic progress and social security.49

In the Conference of Dumberton Oaks (October, 1944) the representatives of Britain, America, China and the then U.S.S.R. agreed to establish an international organization under the title, 'The United Nations'. Then, in the San Francisco Conference of April, 1945, the Charter of the United Nations got its final shape and it came into force from October 24th, 1945.50

It may be said that the human rights movements of the 20th century began with the United Nations. The Charter of the United Nations states: "The peoples of the United Nations determined 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 the Nations large and small........"51

The United Nations opened a new dimension towards safeguarding the human rights and fundamental freedoms of people. The United Nations' Charter was the first international agreement in which the member states made a commitment for the promotion of human rights in the world. It was also the first document to recognise human rights as a principle of international law.

The United Nations has already passed various declarations, conventions and covenants regarding human rights. The International Law of Human Rights now
comprises more than eighty universal and regional conventions and they have binding force upon the state parties and therefore forms the so called hard law. But the recommendations which do not have binding force also have influenced the international and national practices and have helped to create customary norms. The UN agencies are instrumental in standard setting of human rights.

Some of the activities of the United Nations relating to human rights are discussed below.

The international Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols. Beginning from 1948, when the Universal Declaration of Human Rights was adopted, the International Bill of Human Rights was completed only in 1976, when the two Covenants came into force.

The Universal Declaration of Human Rights is the first document on human rights. It brought about international cooperation and consensus regarding the inherent rights of all human beings. Its text was drafted in two years—January 1947 to December 1948. The preliminary text was prepared by an eight-member drafting committee and it was chaired by Mrs. Eleanor Roosevelt. The Universal Declaration of Human Rights was unanimously adopted and proclaimed by the General Assembly on 10th December, 1948. Since then 10th December is celebrated as the Human Rights Day. Though the Declaration is considered as a milestone in the history of human rights, it is not a treaty and therefore, as an instrument of protection, it is technically weak. But its moral force and persuasive character have never been in doubt and it is universally regarded as
expounding generally accepted norms. The UDHR has been incorporated in the fundamental and civil rights chapter of several states and countries. The Constitution of India in Part III reflects the UDHR provisions.

The declaration consists of a Preamble and 30 Articles. It has made it clear that every human being, irrespective of race, colour, sex, language, religion is entitled to all the rights and freedoms set forth in the Declaration. The thirty articles of the Declaration may be briefly mentioned in the following manner.

Articles 1 and 2: These two articles declare that every human being is equal in dignity and rights and everyone is entitled to all human rights and freedoms.

Articles 3 to 21: include civil and political rights, such as right to life, liberty and security of person, equality before the law, right to nationality etc.

Articles 22 to 27: provide for economic, social and cultural rights. They include among others, right to social security, right to work and right to education.

Articles 28 to 30: enunciate that everyone is entitled to an international order for realisation of all the freedoms, everyone has responsibility to the community and that the Declaration cannot be interpreted in a way for the destruction of any right and freedom.

The Universal Declaration came to be recognised as a historic document articulating a common definition of human dignity and values. The Declaration is a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards elsewhere on earth. The Declaration affirms that the exercise of a person's rights and freedoms may be subject to certain limitations, which must be determined by law, solely for the purpose of securing due recognition of
the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

The two covenants, i.e., International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights are international legal instruments. This means that Member States of the United Nations, when they ratify or accede to a Covenant are accepting the obligations to give the force of law to the rights it proclaims.⁵⁷

The International Covenant on Economic, Social and Cultural Rights was adopted by the General Assembly in 16 December, 1966. It came into force from January 3, 1976. It consists of a Preamble and 31 Articles. The Preamble states about the obligation of the States under the charter of the United Nations to promote human rights. The Covenant provides for among others, the right to self-determination, work, form trade unions, social security, adequate standard of living and education.⁵⁸

The Covenant on Civil and Political Rights was also adopted in 1966 and came into force on March 23, 1976. The Covenant consists of a preamble and 53 articles. It recognises among others, the right to life, self determination, liberty and security of person, freedom of thought, conscience and religion. A novel feature of this Covenant is the establishment of the Human Rights Committee, i.e., a body of experts to supervise its implementation.⁵⁹ Article 28 of the Covenant provides for the establishment of the Human Rights Committee. It examines reports of the state parties (Art 40). India has ratified both the covenants in 1979.

The first optional protocol to the International Covenant on Civil and Political Rights entered into force simultaneously with the Covenant. It enables the Human
Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant. It consists of 14 Articles. No complaint is accepted against a state which is not a party to the protocol. The state party against whom allegation have been brought, is to submit its explanation within six months.

The second optional protocol to the International Covenant on Civil and Political Rights entered into force on 11 July 1991. The protocol aims at abolition of death penalty and consists of 11 Articles. It states that abolition of death penalty contributes to enhancement of human rights. India has not yet ratified the two optional protocols.

The four important conventions together with the two international covenants are considered core human rights treaties. The four conventions are as follows:

(c) The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984/1987).

The United Nations performs the monitoring role also. The United Nations monitoring system consists of two types of human rights mechanisms—conventional and extra conventional. They handle the cases of individual human rights abuses and violation of rights by member states.

The conventional monitoring mechanisms consisting of six treaty committees are provided by six core human rights treaties. The committees monitor the ratifying states parties' activities. The six conventional monitoring mechanisms are as follows:
(a) The Human Rights Committee monitors implementation of the International Covenant on Civil and Political Rights.

(b) The Committee on Economic, Social and Cultural Rights monitors implementation of the International Covenant on Economic, Social and Cultural Rights.

(c) The Committee on the Elimination of Discrimination Against Women monitors implementation of the Convention on the Elimination of All Forms of Discrimination Against Women.

(d) The Committee on the Elimination of Racial Discrimination monitors implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

(e) The Committee Against Torture monitors implementation of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.


The views of the committees are not legally binding. But the state parties honour their decisions and make constitutional changes to implement the recommendations. The Human Rights Committee, the Committee Against Torture and the Committee on the Elimination of Racial Discrimination accept individual complaints also, from the citizens of a ratifying country. UNESCO and International Labour Organisation also examine complaints in their respective fields.

The special procedures which are adopted by the Human Rights Commission, outside the treaty framework are called extra conventional mechanisms. The Commission on Human Rights can appoint independent experts to report on human rights violations in specific countries. The experts may seek and receive information from governmental and non-governmental sources, including victims of human rights violations. The expert bodies annually submit their reports with recommendation for action.
The year 1968 was the twentieth anniversary of the Universal Declaration of Human Rights and the United Nations declared it as the International Year for Human Rights and convened an International Conference on Human Rights in Tehran (Iran) to enhance national and international human rights efforts and initiatives. The Conference approved the Proclamation of Tehran. It formulated a programme for the future. It mainly emphasised on the principle of non-discrimination, condemned the policy of apartheid and urged the international community to ratify the International Convention on Civil and Political Rights and the International Convention on Economic, Social and Cultural Rights.

The World Conference on Human Rights in Vienna adopted the Vienna Declaration and Programme of Action in 1993. The full text consists of 39 Articles. It emphasised that as the human rights are universal and indivisible as well as interrelated and interdependent, they should be promoted in equal manner. It further stated that the first responsibility of government is to protect and promote human rights. The Vienna Conference re-affirmed the indivisibility, interconnectedness and universality of human rights which transcend narrow national boundaries.

The United Nations General Assembly unanimously adopted Resolution 48/141 on 20 December, 1993 and established the post of the High Commissioner for the promotion and protection of all human rights. The High Commissioner is the principal United Nations official in the field of human rights. The mandate of the High Commissioner may be classified in four main groups.

(a) Promotion and protection of all human rights.

(b) International cooperation for the promotion and protection of human rights.
(c) Reactions to situations challenging human rights.

(d) Adaptation of the United Nations Human Rights machinery to the evolving needs.

In December 1994, with the proclamation of a United Nations Decade for Human Rights Education (1995-2004), the General Assembly called upon governments, international organisations and non-governmental organisations to establish a partnership and to concentrate their efforts on promoting a universal culture of human rights. The Decade covers the period beginning from 1st January, 1995 to 31 December 2004. The objectives of the Plan of Action of the decade are:

(a) Assessment of needs and formulation of effective strategies for the furtherance of human rights education at the international, regional, national and local levels.

(b) Building and strengthening of programmes and capacities for human rights education at the international, regional, national and local levels.

(c) Coordinated development of effective human rights education material.

(d) Strengthening of the role and capacity of the mass media in the furtherance of human rights education.

(e) Global dissemination of the Universal Declaration of Human Rights.

Thus, human rights passed through a long way, but it took the form of a movement in the 20th century, mainly under the auspices of the United Nations. It may be said, “The twentieth century has witnessed two contradictory developments. On the one hand, there was mass deprivation of human values and rights in the two world wars and also in several local wars thereafter. On the other hand, there has been an upsurge of not only specific recognition of human rights within the domestic campus, but also in international plane. As a result, along with mass deprivation of human rights there has been recognition of inalienable rights.” At present the global attention is addressed to
rights of the indigenous people (the permanent forum of the indigenous people which starts functioning in 2002), rights of the child and the women, among others.

HUMAN RIGHTS IN INDIA

Generally, human rights are considered as a Western concept. But the Indian thinkers are of the view that the philosophy of human rights had already occupied a place of prime importance in ancient Indian society. Human rights in India are discussed below covering three different periods, i.e., ancient period, colonial period and post independence period.

Ancient period : Human rights are an accepted principle of India’s rich legacy of historical tradition and culture since time immemorial. India has a tradition of respect for human rights, which finds mention in ancient scriptures and epics. The Supreme Court of India referred to the source of fundamental rights incorporated in the Constitution of India. In Maneka Gandhi vs. Union of India, it was stated, “These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.”

The dominant culture of Indian tradition emerged from early Hindu thoughts. The sources of early humanitarian laws of India are found in Shrutis, Smritis, Puranas, Upanishads and Commentaries. Besides, in India two non-Vedic traditions, i.e., Buddhist and Jain traditions evolved, which not only espoused the absolutist forms of
humanitarian laws of that time, but also went up to the extent of outlawing any loss of life under one pretext or other.\textsuperscript{69a}

In ancient India even a king was not considered to be above the law; the king had the duty to look after the welfare of his subjects and guarantee them some rights. The epic Ramayana narrates that even the lowest of the low had a right to criticise the king with impunity. Though there was no written law, the king cared for the welfare of people.\textsuperscript{70} The Buddhist doctrine of non-violence, \textit{(Ahimsa Paramo Dharma)}, is a humanitarian doctrine per excellence dating back to the sixth century B.C. Hinduism has preached the doctrine of \textit{‘Vasudhaiva Kutumbakam’}, that is the kinship of the whole world meaning thereby that human beings are all kith and kin of the family.\textsuperscript{71}

The concept of human rights has evolved as part of Indian cultural values. The highest ideal of human life evolved in India is incorporated in a popular prayer \textit{‘Sarve Sukhino Bhavantu’}, that is, let all people be happy. In ancient India, the lives of people were led by \textit{Dharma} and they protected the right to happiness of other individuals. The Vedas, which constituted the primordial source of \textit{Dharma}, declared that, no one is superior or inferior. All are brothers. All should strive for the interest of all and should progress collectively.

Kautilya, the prime minister of Mauryan Empire, wrote Arthashastra around 300 B.C. It is an authoritarian work on \textit{Rajadharma}. It emphatically declared the right to happiness of all individuals and the duty of the king to protect that. Kautilya not only affirmed and elaborated the civil and legal rights but also added a number of economic rights.\textsuperscript{71}
Mahabharata declares that one of the most important pious obligations of an individual is acquisition of knowledge and its dissemination to the next generation. The Supreme Court highlighted this aspect in Mohini Jain’s case. It viewed that the right to education should be regarded as fundamental right. It stated, “Indian civilisation recognises education as one of the pious obligations of the human society. To establish and administer educational institutions is considered a religious charitable object. Education in India has never been a commodity for sale”.

In the case of Unnikrishnan P.J vs State of A.P., the Supreme Court referred to the importance of education as emphasised in the Neetishatakam by Bhartrihari and held that the right to education is therefore part of the fundamental right under Article 21 of the Constitution of India.

The Vedas laid high importance on the right to equality. The Samajnana Sukta of Atharva Veda states, “All have equal rights in articles of food and water. The yoke of the chariot of life is placed equally upon the shoulders of all. All should live together with harmony supporting one another like the spokes of a wheel of the chariot connecting its rim and hub.”

Hindu thinkers always held law or dharma superior to state and government. The kingship was a trust and the Indian kings like Ashoka and Harsha looked upon themselves in that light.

The advent of Muslim rule led systems and ideals different from Hindu view of life. Muslim conquerors like Mahmud Ghaznavi made frontal attacks on ancient way of Hindu life and religion. However, a new era began with Akbar. His policy of universal reconciliation and tolerance led to understanding between the Muslim rulers and the
Rajputs.\textsuperscript{78} Pluralism and secularism have become Indian way of life since then and Indian constitutional expression of human rights reinforced by Supreme Court verdicts articulates the concept of pluralism, secularism and federal concepts in large measure.

**Colonial period**: The disintegration of the Moghul empire started after the death of Aurangzeb in 1707. Several Civil Wars and foreign invasions made political situation unstable. However, the British, after winning the battle of Plassey in 1757, established a new legal and political order.\textsuperscript{79} With the advent of British rule in India, the British started the task of framing a legal infrastructure which would lend stability to their rule and provide the rule of law for the subjects. They codified the laws such as the Law of Contract 1872, the Laws of Civil and Criminal procedure 1908 and 1898 respectively, the Penal Law 1860, the Law of Transfer of Property 1882, and the Law of Evidence, 1872.\textsuperscript{80}

In India, the explicit demand for human rights was made during the British rule. In 1895, the Constitution of India Bill envisaged for India a constitution guaranteeing to everyone of her citizens certain basic human rights like freedom of expression, inviolability of one's house, right to property, equality before law etc.\textsuperscript{81} The Bombay Session of Congress in August, 1918, after the publication of the Montague Chelmsford Report, demanded for a new constitution of India with the provision of 'declaration of the rights of the people of India as British Citizens', guaranteeing protection in respect of liberty, life and property. \textsuperscript{82}

The Commonwealth of India Bill, finalised by the National Convention in 1925 embodied a specific declaration of rights. At the Madras Session of the Indian National Congress in 1927 it was reiterated that the basis of any future constitution of India must
be a declaration of fundamental rights. The Report of the Nehru Committee, appointed in 1928, declared that the first concern of Indian people was to secure fundamental human rights. The recommendations made in the Report contained a number of fundamental rights, such as, right to personal liberty, freedom of conscience, practice of religion, free expression of opinion etc. However, the systematic demands did not evoke favourable response from the Simon Commission which paid a visit to India to review India’s Constitutional progress.

At the Lahore Congress of 1930 also it was declared that “the inalienable right of the Indian people as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth.” A new dimension was added to the demand for constitutional rights. The Congress session held at Karachi in March 1931 adopted the Resolution on Fundamental Rights and Economic and Social Change, which was both a declaration of rights and a humanitarian socialist manifesto. It emphasised the state's positive obligations to provide its people with the economic and social conditions in which their negative rights would have actual meaning. The Joint Parliamentary Committee on Indian Constitutional Reform (1933-34) did not approve of the inclusion of fundamental rights in the Constitution.

The Sapru Committee (1944-45) considered the subject of fundamental rights during its deliberations. The Sapru Report said that, the fundamental rights of the new Constitution will be a 'standing warning' to all that what the constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civic rights, equality of liberty and security in the enjoyment of
the freedom of religion, worship, and pursuit of the ordinary applications of life. One of the most important features of the Sapru Report was that it made distinction between justiciable and non justiciable rights.88

The Cabinet Mission in 1946 conceded the demand for the Constituent Assembly and also the need for a written guarantee of fundamental rights and it recommended the appointment of an Advisory Committee on the Rights of Citizens. On January 24, 1947, the Constituent Assembly elected an Advisory Committee for reporting on fundamental rights.89

Post independence period: Every state is known by the rights that it maintains.90 In India, after independence, the constitution has guaranteed several rights for the enjoyment of the citizens.

The demand for a declaration of fundamental rights arose from four factors91:

(a) Lack of civil liberty in India during British rule.

(b) Deplorable social conditions particularly affecting the untouchables and women.

(c) Existence of different religious, linguistic and ethnic groups encouraged and exploited by the foreign imperialist government.

(d) Exploitation of the tenants by the land lords.

During the period of framing of the Constitution of India, the constitution makers took serious note of the various national and international developments. At that time the General Assembly of the United Nations adopted the Universal Declaration of Human Rights on 10 December, 1948. The framers of the Constitution of India were influenced by it and many provisions of the Universal Declaration of Human Rights were incorporated in the list of fundamental rights and the directive principles of state policy.92 The Constitution of India creates two broad categories of human rights: civil
and political rights and social and economic rights. "The Classical Individual Liberties" have been incorporated in the chapter on Fundamental Rights and the economic and social rights are a part of the Directive Principles. Apart from these the preamble and the Fundamental Duties also deal with human rights of the citizens of India.

The preamble of the Constitution of India assures all the citizens justice, liberty, equality and fraternity. It states, "to secure to all its citizens: Justice-social, economic and political; Liberty of thought, expression belief, faith and worship; Equality of status and opportunity, and to promote among them all...". Thus the preamble declares the great rights, and freedoms which the people of India intended to secure to all citizens.

Part - III of the Constitution (Arts 12-35) contains a long list of fundamental rights. V.G. Ram Chandran describes it as the 'Magna Carta' of India. The incorporation of the fundamental rights in the Constitution works as a dampner in the autocratic attitude of the ruling clique in a society. The fundamental rights incorporated in the constitution are Right to Equality, Right to Freedom, Right against Exploitation, Right to freedom of Religion, Cultural and Educational Rights and Right to Constitutional Remedies. Article 13 gives teeth to the fundamental rights and also makes them justiciable. The effect of the Article is that the fundamental rights cannot be infringed by the government. According to Article 13(2), the State "shall not make any law which takes away or abridges the fundamental rights, and a law contravening a fundamental right is, to the extent of contravention void." The Supreme Court, in its jurisdictions, made extensive references of the human rights. Justice Krishna Iyer, in Sunil Batra's case thus opines, "Today, human rights jurisprudence in India has Constitutional status."
Part - IV of the Constitution (Arts 36-51) contains the Directive Principles of State Policy which at one stage have been conceived as fundamental rights. Though these principles are not justiciable, they lay down some socio- economic goals which the various governments in India have to strive to achieve. These principles oblige the state to take positive action in certain directions in order to promote the welfare of the people.\(^9\) These principles contain, among others, to provide adequate means of livelihood for all the citizens (Art 38), equal pay for equal work [Art 39 (d)], right to work and education (Art. 41), living wage for workers (Art 43) and promotion of international peace and security (Art 51). Justice Krishna Iyer observed, “It may be stated in the light of Article 51 of the Indian Constitution, the State is obliged to ‘foster respect for international law and treaty obligations’. It follows that human rights, incorporated in the three great international instruments, often regarded as the universal Magna Carta, is bound to be respected in the Indian jurisdiction by courts while expounding human rights jurisprudence.”\(^10\)

In 1976, by the 42nd Amendment, the new part IV (A) [Art 51 (A)] was incorporated in the Constitution of India. There are ten fundamental duties to be performed by the citizens of India. There are certain duties such as, to renounce practices derogatory to the dignity of women and to protect and improve natural environment which safeguard human rights.

The Government of India passed the Protection of Human Rights Act, 1993 for better protection of human rights. Sec 2 (d) of the Act states, “Human Rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts of
The Act provides for the establishment of a National Human Rights Commission and State Human Rights Commissions to exercise the powers conferred upon and to perform the functions assigned to, under the Act. The very idea to bring Human Rights Commissions into existence is to give practical shape to the entire gamut of human rights philosophy by executing the intention of the legislators manifested in different social legislations.

Moreover, the National Legal Services Act, 1987, the mechanism of Public Interest Litigation, the judicial activism of the Supreme Court, among others, have been largely instrumental in the protection of civil liberties and human rights of the citizens.

As per the observations made by the United Nations' Human Rights Committee and other United Nations agencies, government of India has to strengthen national institutions by establishing National Minority Commission in 1993, National Commission on Women in 1992, and has taken the stand to set up a National Commission on child. Several states have also set up state commissions on human rights. The government of Assam has set up Assam Human Right Commission in 1996.

Parties to the International Covenant on Civil and Political Rights are accountable to the UN Human Rights Committee for maintaining the universal standard. India's third periodic report was due in 1992 and submitted on 29 November, 1995 has been placed before the UN Human Rights Committee in July 1997 for deliberation of the committee. The committee in its concluding observations, has appreciated some of the positive contributions of India, viz., installation of the National Human Rights Commission in 1993, reservation of one third of elected seats in local bodies for women,
among others. The committee however, has expressed deep concern over other commissions and omissions of the government of India in other fronts—the Optional Protocol to the political covenant, the continuing reliance on Armed Forced (Special Powers) Act, the National Security Act, etc.\textsuperscript{105}

Thus, much have been done in the field of human rights both in the international and national sphere. But there is a wide gap between theory and practice. In the words of justice Krishna Iyer, it may be said, "We live in a period of civilisation when human rights have received recognitions through universal instruments and national constitutions. But the poignant paradox of contemporary times is that humans without rights are on the increase, blood and tears, trauma and torture claim victims everywhere and the land of the Buddha and the Mahatma, several decades after fundamental freedoms were guaranteed, is witness to the distressing reality of social, economic and political have nots being denuded of dignity, peace and the right to life itself."\textsuperscript{106}

The following chapter focuses on women’s human rights scenario in the global as well as in Indian context.

NOTES AND REFERENCES


11. Supra, Note 6, p. IX.


14. Supra, Note 12, p. 716.

15. Supra, Note 13, p. 7.


18. Supra, Note 12, p. 716.


20. Supra, Note 5, p. 137.

21. Supra, Note 3, p. 31.


24. Ibid., p. 55.


27. Supra, Note 3, p.29.

28. Supra, Note 26, p.76.


31. Supra, Note 25, p.25.

32. Supra, Note 26, pp. 477-78.

33. Ibid., p. 392.

34. Supra, Note 3, p.35.


36. Supra, Note 10, p.15.

37. Supra, Note 30, p.393.


40. Supra, Note 38, p. 109.

41. Supra, Note 30, p. 395.


44. Supra, Note 30, p. 475.

45. Supra, Note 39, p. 10.

46. Supra, Note 12, p. 719.

47. Supra, Note 3, p. 50.


49. Supra, Note 3, p. 50.


52. Supra, Note 8, p. VIII.

53. Supra, Note 13, p. 16.


56. Supra, Note 13, p. 16.


59. Supra, Note 57, p. 3.

60. Supra, Note 13, pp. 68-69.

61. Supra, Note 54, p. 8.

62. Ibid., pp. 15-16.

63. Supra, Note 8, p. 48.

64. Supra, Note 54, p. 9.


70. Supra, Note 67, p. 2.


73. Supra, Note 9, p. 20.


77. Supra, Note 23, p. 35.

78. Ibid., p. 183.


83. Supra, Note 9, pp. 21-22.

84. Supra, Note 79, p.18.


86. Supra, Note 81, p. 56.

87. Supra, Note 85, p. 95.

88. Supra Note 81, p. 59.

89. Supra, Note 82, pp. 70-71.


91. Supra, Note 68, p. 25.

92. Supra, Note 80, pp. 87-88.

93. Supra, Note 68, p. 42.


95. Ibid., p.30.

96. Supra, Note 67, p. 3.


98. Sunil Batra vs. Delhi Administration, AIR 1978 S C.1575.

99. Supra, Note 97, p.737


102. Ibid., Sec. 21.

103. Supra, Note 68, p. 51.

105. Supra, Note 69a, p. 158.

106. Supra, Note 100, p. V.