CHAPTER-I

INTRODUCTION: HUMAN RIGHTS
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The human rights movement in India is an offshoot of the social and cultural renaissance that began in nineteenth century British India. Establishment of British rule united the subcontinent. The pioneering work of orientalists such as Sir William Jones, James Prinsep, Charles Wilkin and Max Muller established and promoted intellectual unity. However, the ideals of modern-day human rights can be seen in various classic religious and secular sources, such as the Vedas, Puranas and epics. Although human rights in ancient Indian literature did not form a coherent unified structure, they could be seen spread all over. The Rig Veda talks about three civil liberties: Tana (body), Skridhi (dwelling house) and Jibazi (life); Mahabharata, the great Indian epic, describes civil liberty of the individual in a political state. The Aitareya Brahmana states that the kings were required to act according to "whatever law there is and whatever is greatest political treatise of ancient India, written by Kautilya, provides for detailed civil and legal rights. It states that, "the king shall provide the orphan, the aged, the infirm, the afflicted and helpless with maintenance. He shall also provide subsistence to the helpless expectant mothers and also to the children they give birth to". The Manusmriti, Mahabharata and Arthashastra also focus on the conduct of war – indicating that the major source of violation of human rights in ancient India was war. Besides, the underlying principle of Vasudeva Kudumbakam propounded the concept of universal equality.

In modern history, Raja Ram Mohan Roy can be considered as the father of India's human rights movement. He was the first to oppose all discriminations and evil practices against women. He raised his voice against polygamy and sati (widow burning) at two levels. First, he
approached the British rulers directly to legally ban such practices, and second, he mobilized the masses in favour of such a ban. He published Modern Encroachments on the Ancient Rights of Females according to the Hindu Law of Inheritance in 1822 and established Brahma Samaj in 1828. The Brahma Samaj was against sacrifice, and emphasized love of mankind, irrespective of colour, race or creed. As a result of his efforts, Lord William Bentinck, the then Governor-General of India, passed Regulation XVII in December 1829, which declared practice of ‘sati’ illegal and punishable. Thus began the human rights movement in India in the 1820s. The formation of Brahma Samaj led to the growth of an organized social movement, which gave importance to many modern-day human rights ideals.

Keshav Chandra Sen, following Raja Ram Mohan Roy, took up issues such as women’s education and intercaste marriage, and began campaign against child marriage. Sen started a fortnightly journal called the Indian Mirror (which later became the first Indian daily in India) to propagate these ideals. Jyotiba Phule took up the untouchable issue and began an organized crusade against untouchability. He formed Satya Shodak Samaj in 1873 to liberate the depressed castes and to create awareness among them. The Theosophical Society was established in the 1870s and preached universal brotherhood of Human beings irrespective of caste, creed and race.

The effects of these various nineteenth century movements were reflected in the Indian National Congress in the twentieth century. The Congress fought not only against the British but also the various social evils prevailing then in India. Long before Indian independence, Jawaharlal Nehru, Mahatma Gandhi and other Congress leaders created awareness on several human rights issues. The Indian National Congress, to certain extent, can be considered as one of the largest human rights movements.
The Nehru Committee, appointed in 1928, made recommendations that include the following: personal liberty and inviolability of dwelling place and property; freedom of conscience and of profession and practice of religion; right of free expression of opinion; right to free elementary education; and, equal treatment of all citizens by law of the land.

In the constitution of India some of these ideals were reflected especially in the chapters as Fundamental Rights and the Directive Principles of State Policy.

However, promulgation of a new constitution by incorporating several provisions to protect and promote human rights did not automatically do away with violations. The age-old traditions and evil practices, coupled with problems confronted a newly independent country and proved to be an effective stumbling block in achieving the human rights objectives. Even today, problems of nation building and society building haunt the country. Thus, human rights violations still persist despite the efforts taken in the last 63 years.

It is significant however to note that the deliberations vis-à-vis protection and promotion of human rights that took place during the formation of the UN and those discussions in the UN General Assembly, which ultimately led to the Universal Declaration of Human Rights, had a great impact on the Constituent Assembly of India and the founding fathers of Indian Constitution.

**United Nations and Human Rights**

The theme of "All Human Rights for all" highlights the universality, indivisibility and the interrelationship of all human rights, above all it recognizes the inalterable nature of human rights for human existence.
Mrs. Eleanor Roosevelt, who chaired the United Nations Human Rights Commission declared, "Where, after all do universal right begin?" In small places, close to human – so close and so small that they cannot be seen from any of the impasses of the World, yet they are the world of individual persons, the neighbourhood he lives in; the school or college he attends; the factory, farm or place where he works. Such of other places where men, women and children seek equal justice, equal opportunity, equal dignity without discrimination.

Respecting human rights should be considered as our responsibility towards each fellow human being. At the same time, we cannot over-emphasise only the rights and ignore duties. The rights of the children imply corresponding duties of the parents; the rights of women imply corresponding duties of the men towards women folk; we should perceive them. If everybody does his duty, the question of rights will not arise at all. The education of human rights should be undertaken in this manner.

In Paris, on December 10, 1948, the UN adopted the Universal Declaration of Human Rights (UDHR). The UDHR was framed at the time when the world was recovering from a long period of bloody and horrific conflict. The conflict followed with a depression in the economic and social conditions of the people.

The declaration proclaims that human beings are born free and are equal in dignity and rights. Its articles cover a wide range of rudimentary / basic rights including the right to be presumed innocent until proven guilty, the right of freedom of speech and the principle that no one shall be subjected to slavery, torture or arbitrary arrest, detention or exile.

India, in recent years saw some remarkable decisions by Courts, the National Human Rights Commission (NHRC) and the Central Government itself. The people also got themselves organized, anywhere from a handful
of individuals to more systematic organizations, which are continuing to
address a range of human rights issues, special political and economic.
A large number of network of various human rights groups have emerged in
India, are fighting for the common causes in different parts of India.

Scrutiny by the NHRC and International Human Rights Organizations
and the persistence of individuals including Judges, have resulted in a
greater accountability of the security forces. The NHRC continues to play
an important role in investigating and redressing human rights abuses all
over the country.

The people living in the remotest parts of India, i.e., the rural tribes
and other marginalized sections of our society have always been deprived
of their basic human rights. These people are not even aware of what their
basic human rights are. Therefore, there is a need that these sections of
our society are made aware of the same.

It is now one of the prime duties of the NHRC to not only take
individual cases but also concentrate on cases where there are violation(s)
of communal rights noted. The States of UP and Bihar alone account for
about 54 per cent cases of human rights violations in India. It is unfortunate
to note that the girl child from cradle to the grave is totally deprived of her
basic human rights.

It is disturbing to note that micro protects which are sustainable and
the need of the hour of poor people living in these remote areas, have been
suspended in all those areas which have been declared as protected areas.
According to the Indian Forest Act and the Wild Life Protection Act, the
protected areas have to be free from any kind of interference, which again
denies these people the right to live with security and dignity.
In a developing nation like India over 340 million people live below the poverty line and are trapped in a vicious cycle in which they remain because they are not able to acknowledge their basic human rights.

All Human Rights derive from the dignity and worth inherent in the human person by virtue of his birth as a human being. Humans are the central subject of Human Rights and Fundamental Freedoms. Whatever required for a dignified and free existence of Human Beings should be regarded as Human Rights. Evolution and crystallization of this concept took a long time. Initially, there was confusion between the Natural Rights propounded by political philosophers in the bygone ages and the Human Rights. One must know that the latter is an all encompassing one.

In history and ancient scriptures, references to the basic Human Rights can easily be noticed though they were not referred to as rights. Modern Historians credit the origin of human rights to MAGNA CARTA of 1521 A.D.

The term Human Rights was introduced in the United States' Declaration of Independence in 1776 and thereafter in the bill of rights in US constitution. The French Revolution gave birth to the Declaration of Rights of Man and Citizen in 1789. In 1929, the Institute of International Law, New York, USA, prepared a Declaration of Human Rights and Duties. In 1945, the Inter-American Conference passed a resolution seeking establishment of an International Forum for the furtherance of Human Rights of Mankind.

The United States in 1978 defined Human Rights in a Policy Document as follows:

"Freedom from arbitrary arrest and imprisonment; torture; unfair trial; cruel and unusual punishment; and invasion of privacy. Right to food,
shelter, health care, education and freedom of thought, speech, assembly, religion, press, movement and participation in Government".

In India, the protection of Human Rights Act 1993 defined Human Rights as "the rights relating to liberty, equality and dignity of the Individual guaranteed by the Indian Constitution as embodied in the Fundamental Rights and the International Covenants".

Thus, human rights are "the rights relating to liberty, equality and dignity of the individual guaranteed by the Indian Constitution as embodied in the international covenants and enforceable by courts of India".

In the recorded history and ancient scriptures, there have been references on the basic rights, though there were not referred to by that name. Modern historians credit the origin of the concept of Magna Carta 1521 A.D. French Revolution, gave birth to the Declaration of Rights of man and citizen in 1789. Followed by Virginia Bill of Rights. Then came the United Nations Proclamations of the Universal Declaration of Human Rights (1948). The Constitution of India, which came into effect in 1950, incorporated a part on "Fundamental Rights" of the citizens. There is striking relationship between Universal Declaration and our Fundamental Rights enshrined in our Constitution.

It is common to refer to the evolution of the contemporary concept of Human Rights into three generations of Human Rights.

The first generation rights are these that were concerned mainly with the civil and political rights of the individual.

The second generation rights, are those which can be said to be "Security-oriented", and provide for social, economic and cultural security.

The third generation of rights, are of relatively recent origin. They have evolved in response to various new concerns over which international
consensus has emerged in recent years. These include environmental, cultural and developmental rights.

The Vienna declaration rightly affirmed that "All human rights are universal, indivisible, interdependent and interrelated. It has also affirmed that democracy is the role guarantor of individual rights-civil, political, economic, social and cultural- and collective rights" with in states and within the community states".

MEANING, NATURE & SCOPE

The most striking feature of the concept of human rights is that "they may be difficult to define but impossible to ignore". The theorists or the ideologies, the politicians and the statesman may quarrel about the patterns of governments or the principles of state craft, but they cannot repudiate the facts of torture, hunger, genocide, abduction, hijacking of planes, arbitrary detention in concentration camps and the like. The colour of the skin of a people may be white or black, the level of the mental make-up of a people may be high or low, the way of life of a people may be primitive or modern to the core, the essential reality of all belonging to the species of human race cannot be dismissed by any stretch of imagination. Man as a member to the human society has some rights in order to survive as well as to make his life better. So it is said; "Human rights are, therefore, concerned with dignity of the individual- the level of self-esteem that secures personal identity and promotes human community".

It would not be wrong to say that the case of human rights is a reinterpretation of the classical doctrine of natural rights as enunciated by philosophers like Locke and Paine in as much as they "express virtually all the requirements of practical reasonableness". And the principles of practical reasonableness are those which make possible the achievements of the end of the basic goods of human flourishing by connecting up nature
and reasoning. These basic-goods include life, knowledge, play, athletic experience, sociability and religion. Human rights have a part in this account of human flourishing by providing the infra-structure by means of which it is achieved. And they can be accepted as part of natural law doctrine despite their rather unfortunate association with fanatics, advertisers and self-interested persons for three reasons. They stress equality and make of justice a prominent political issue. They are anti-consequentialist by their insistence that moral worth is to be judged not by the effect of an action, but by whether or not it would be right to do in the first place according to certain ends that must be respected. And they provide to gather a checklist of the aspects of human flourishing.

A plausible definition of the term 'human rights' would be that they "are the rights that everyone has, and everyone equally, by virtue of their very humanity. They are grounded in our appeal to human nature".

As such, their main implications and characteristic features may be enumerated as under:

1. First and foremost, it implies that 'everyone has them'. The subjects of human rights are not the members of this or that country or nation but of the community of mankind as a whole.

2. Human rights are like moral rights and, such, the element of their enforcement lies in the faculty of man's conscience. They cover legal rights protected by the law of the state; they also cover 'fundamental rights' incorporated into the basic law of the land and thereby given special treatment in respect of their amendment and judicial enforcement. In other words, they cover all forms of rights-social, economic, political etc. Where by a man may lead a life of peace, security and dignity.
3. All human beings possess rights by virtue of being members of the great human society irrespective of the fact that they know about them or not. For instance, the uncivilized negroes of Somalia should not be deprived of such rights in spite of the fact that most of the tribals are engaged in a condition of civil war. What is needed is that they must be taught the meaning of human rights so that they may lead a life of security, peace, and dignity.

4. An appeal to the cases of human rights covers the world as a whole and as such it sanctions the use of persuasion as well as force by foreign powers to intervene in the domestic affairs of a state where human rights are not properly honoured. In this way, the present case of human rights involves the case of restraints on the wayward sovereignty of a state. The international community, for instance, may prevent the ruler of Iraq from suppressing the rights of the Kurds.

5. It does not mean that human rights have an unqualified character. Like all rights, they may also be restricted in the interest of public peace, social decency, political security and the like. Each country has its own cultural mores in the light of which reasonable restrictions may be put on the exercise and enjoyment of such rights. This point acts as a great barrier in the way of the universalisation of human rights.

It, however, remains to be said that the difficulty in defining human rights arises from the fact that there is no universally accepted conceptions in this regard. It has, in fact, varied from time to time, place to place, people to people. Even within the same society their perceptions vary from one segment to another. Their real meaning keeps on evolving with the
passage of time and under constantly shifting social and economic conditions. And despite this all, "the fundamental 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. These rights are essential for the adequate development of the human personality and for human happiness. Without getting involved in definitional controversies, therefore, human rights may be said to be those fundamental rights to which everyone or woman inhabiting any part of the world should be deemed entitled merely by virtue of having been born a human being".

CHARACTERISTICS OF RIGHTS

There are certain characteristics of rights which are being demanded by the people everywhere in the world. The rights must correspond to the needs of the people. Since the needs of the people are recognized by the law of the land they become precise and capable of enforcement.

NATURAL RIGHTS

According to writers like Hobbes and Locke, natural rights were those which were enjoyed by the individuals in the state of nature. According to Rousseau, natural rights were the ideal rights and they existed before the state came into existence. The theory of natural rights is accepted as that these are considered to be natural and essential for the individuals whether they are actually recognized or not. No state can be considered to be civilized unless it guarantees these rights.

MORAL RIGHTS

Moral rights are those rights which are recognized by the moral sense of the people. Their existence is due to custom, long usage and the force of public opinion. There is no sanction of the state to enforce them.
While no legal action can be taken against those who violate moral rights, the force of public opinion is so strong that it is difficult for an individual to violate them.

**LEGAL RIGHTS**

"According to Dr. Leacock, a legal right is a privilege or immunity enjoyed by a citizen against any of his fellow citizens, granted by the sovereign power of the state and upheld by that state". Legal rights are recognized by the state and the police and the courts ensure their enforcement. Legal rights are embodied in the law of the country.

**CIVIL RIGHTS**

Civil rights are those rights without which civilized life is not possible. The importance of civil rights cannot be over emphasized and every civilized state has to guarantee these rights. The most important civil rights is the "Right to life". It is the fundamental of all rights, other rights are meaningless without this right.

**POLITICAL RIGHTS**

The citizens must be given an opportunity to take part in the affairs of the state. No democratic government is possible without the active participation and co-operation of the citizens. Political rights include the right to vote, the right to become members of legislatures, the right to take part / accept political positions like to become ministers, president, etc. and the right to resist the unjust actions of the state.

**ECONOMIC RIGHTS**

It is only in recent times that the importance of economic rights has been recognized. It is felt that without these rights political and civil rights have no meaning. Life has no meaning for a person whose very existence
is precarious. Economic rights are three in number; the right to work, the right to adequate wages and the right to reasonable hours of work.

FUNDAMENTAL RIGHTS

It is becoming common to incorporate what are considered to be fundamental rights of individuals in the constitution of a country. Such rights are to be found in the Constitution of India, The United States, Ireland etc. The fundamental rights are inherent rights because they we can life itself. If a citizen is to live and not mere exists, these rights must be recognized a sacred and inviolable and fundamental to the state itself. The object of the state is to enable the people to have full lives and if the fundamental rights are denied, a full life is not possible.

EMERGENCE OF CIVIL LIBERTIES MOVEMENTS

In India, the last quarter of the 20th century has been witness to a growing recognition of the place and relevance of human rights. It is axiomatic that this interest in human rights is rooted in the denial of life and liberty that was a pervasive aspect of the Emergency (1975-77). The mass arrests of the leaders of the opposition, and the targeted apprehension of those who could present a challenge to an authoritarian state, are one of the dominant images that have survived. The involuntary disappearance of Rajan in Kerala is more than a symbol of the excesses of unbridled power. Forced evictions carried out in Delhi is what is known as “Turkman Gate conjures UP visions of large scale razing of dwellings of those with out economic clout, and of their displacement into what were the outlying areas of the city. The catastrophic programme of mass sterilization is an indelible part of emergency memory".
NEED OF HUMAN RIGHTS

Any human being without human rights cannot survive in world. The need of Human Rights is very necessary to all the people. Because the wipe-out of the incidents of torture, inhuman treatments in jails etc. Particularly in India the human rights violation is very common firstly in police departments, who used filthy language on criminals. Basing on this the criminals will change more dangerous, this is very high problem to the nations.

The Human Rights must be want to curtail of the violations relating to human rights. The human rights are helpful to every person for living with standards and also without coercion, and fraudulent. In case of any human rights violations the State human rights commissions and National human rights commissions are there for giving the solution (or) to punish the wrong doer.

The human rights are necessary for children, women, old age people and disabled persons mostly, not only them every human being is eligible for this.

The human rights are very essential to the people for happily living and if any violations are there, the Supreme Court and High Courts will punish the wrong doer.

In the present days the need of human rights is very necessary for the people for enforcement of their rights.

HUMAN RIGHTS - A RETROSPECTIVE STUDY

To examine the main foundations of the international recognition and protection of human rights it is essential to enquire into the relation between, on the one hand, the conceptions of the law of nature and the natural rights of men, and, on the other hand, the effective acknowledgement of these
rights by international law. In fact, the concept of human rights has been evolved from the concept of natural rights which in turn were derived from Natural Law. There had long been a tendency to set up Natural Law as a body of principles superior to positive law. The law of nature, even when conceived as an expression of more ethical postulates, has had an inarticulate but effective impact in the interpretation of positive law. The development of human rights and their recognition and protection on international level can be divided into different periods.

A. NATURAL LAW AND NATURAL RIGHTS IN ANCIENT TIMES

Historically, the idea of Natural Rights is very old. In the classical literature of Ancient Greece from the 5th century B.C. we come across a striking expression of the belief in the power exercised by the gods in a human society based on law. According to Ancient Greek writers, the god establish a law which stand above the obligations and interdictions imposed by the rulers of the community.¹

In Roman Law a distinction was made between national law (jus civile) and the law which is actually common to all nations (jus gentium).² Jus naturale was regarded as that law which the nature has herself established. According to Marcus Tullius Cicero, the great Roman Jurist, there is one eternal and immutable law, which will apply to all people at all times and which emanates from the God – is Natural Law. From man’s essential nature, which is reason and which he shares with God, Cicero deduced not only a common law, but also a common share in justice.³

Despite the scarcity of information on Ancient Indian history, scholars have expressed the view that there was a rich jurisprudence in ancient India. That jurisprudence provided an adequate framework for the regulation of the behaviour of ordinary persons as well as the sovereign, the King. Two norms, viz. Dharma and Danda, which were necessarily
influenced by the theological tenets of the Vedic Aryans, contained several features of a regulatory mechanism for religious practices. The king had the authority to implement this system and the laws under it. But he himself was bound to follow the law, the norms laid down by religion codes and commentaries. Torture and inhuman treatment of prisoners were prohibited under Ashoka's administration. Therefore, we find the traces of natural law and natural rights in ancient India.

B. NATURAL LAW AND NATURAL RIGHTS IN MIDDLE AGE

The concept of Natural Law was elaborated during the Middle Ages in the works of the Christian theologians, in the form of a belief in a law of God, above all human laws. St. Augustine carried out the principle further and said that a law which violated justice was in principle invalid. St. Thomas Aquinas also noted the importance of Natural Law and defined this concept as 'the participation in the eternal law of the mind of a rational creature'. The state is subject to that higher law which determines the relation of the individual to the state. He further stated that the justification of the state is in its service to the individual; a King who is unfaithful to his duty forfeits his claim to obedience. This idea led to the establishment of doctrine of natural rights and by the end of Middle ages the concept of natural rights of man became well established. All this lead to the formation of right to revolt against a tyrannical ruler. According to Jean Bodin, Tyrannical Monarch is one who violates the freedom of his subjects, "Trampling the laws of Nature beneath his feet".

In Middle Ages, number of acts were enacted to show the superiority of Natural Law and Natural Rights. The principle of the Habeas Corpus Act latent in the 39th Clause of Magna Carta was acknowledged already in 1188 by Alfonso IX at the Cortes of Leon. The Great Charter of the Liberties of England or the Magna Carta of 1215 was imposed on King John by the Prelates, Earls and Barons of his realm after his defeat by the king of
France in 1214. The Golden Bull issued in 1222 by King Andrew II of Hungary is couched in language strikingly reminiscent of that used in Magna Carta. So is the law of General Privileges granted in 1283 by Peter III of Aragonete.⁸

C. NATURAL LAW AND NATURAL RIGHTS IN 17TH AND 18TH CENTURY

Teachings of Machiavelli which dominated politicians and jurists of 16th century, set in a wave against Natural Law. But soon after two factors combined to revive and strengthen the idea of natural rights of man. First factor was religious tolerance which brought forth the insistence on the natural rights of freedom of conscience and religious belief.⁹ Second factor which helped to keep alive the idea of natural rights was the theory of social contract, which of course started in Middle Ages but became more predominant by the beginning of the 18th century. The very notion of the social contract implied the existence of rights which the individual possessed before entering organized society.¹⁰ The contributions of Hugo Grotius,¹¹ Vattel,¹² Pufendorf¹³ and Wolff¹⁴ in the development of the concept of natural rights are commendable.

In addition to these two factors, there were other factors which emphasized the vitality of the natural rights of man. Milton's appeal to the natural freedom of man as the basis of his claim to be ruled by law and not by the arbitrary whim of man; the insistence in the course of the Puritan revolution, on natural rights in support of political freedom, social equality and universal suffrage; the place which Blackstone assigned to the natural rights of man are some of the examples of the factors which gave force to the doctrine of natural rights in 16th century. The Virginian Declaration of Rights of 1776; other similar constitutional enactments,¹⁵ in the same year; the constitutions of New York and of New Georgia of 1777; and that of Massachusetts of 1780; the Declaration of Independence of 1776 and the
Bill of Rights in the form of the first ten Amendments to the Constitution of America; the Declaration of the Rights of Man and of the Citizen adopted in 1789 by the French National Assembly and prefixed to the Constitution of America; the Declaration of the Rights of Man and of the Citizen adopted in 1789 by the French National Assembly and prefixed to the Constitution of 1793 and 1795 – all these expressly acknowledged the inherent rights of man.16 In all these enactments, the formal incorporation of the inherent human rights and the possibility of their consequent protection not only against the tyranny of Kings but also against the intolerance of democratic majorities was a new idea. This was the first attempt to derive human rights from natural rights.

D. NATURAL RIGHTS AND DOCTRINE OF HUMANITARIAN INTERVENTION IN 19TH CENTURY

At the turn of the century after the French Revolution the doctrine of Natural Law was a doctrine of abstract and immutable principles and of eternal and inviolable human rights. In England Burke launched his attack against the assertion of the Natural Law doctrines.17 In Germany, reaction against the philosophy of Natural Law emerges with "Historical School" of jurisprudence. But we come across the occasions, in this century, on which the doctrine of 'humanitarian intervention' has been invoked on behalf of nationals or inhabitants of foreign countries. Such, for example, was the intervention in 1827 by Great Britain, France and Russia on behalf of the Greek Revolutionaries, the numerous interventions protecting Turkish treatment of Armenians and other Christians, and the protests by the United States in 1891 and 1905 against anti-Semitic outrages in Russia.18

From the beginning of the 19th century, attention was directed more to the rights of the individual than to the objective norms. But nation states have persistently claimed supreme authority over all persons within their
respective territories. Traditional international law recognized only nation states as the appropriate subjects of international law.

In consequences, subject to permissible exceptions, relation between a nation state and its subjects according to traditional prescriptions are a matter of 'domestic' concern or law, not covered by rules of international law. Under this prescription, therefore, an individual cannot claim international rights as against his own state and, in the absence of international agreements, he has no locus standi before an International Court for demanding redress against the violation of rights by his home state. It is pertinent to note here that inspite of the inadequacies of traditional international law an increasing number of treaties were entered into the purpose of which was to protect the rights of certain classes of persons. These developments of 18th and 19th century culminated the idea of human rights.

E. NEW ATTITUDE TO THE CONCEPT OF HUMAN RIGHTS IN 20TH CENTURY

Great importance has been attached in the 20th century to the human rights issue in the international arena, and tremendous efforts have been made, through the formulation of new principles and procedure to transfer the protection of basic rights from the hands of nation states to an authoritative supranational organization. The uncompromising acceptance of the principle that 'all men are born free and equal dignity' has emerged pragmatically from the crucible of experience as the most valid of all working hypothesis of human relations. By the end of First World War, apart from political and civil rights, also developed the concept of economic, social and cultural rights. The idea that workers needed special safeguards was beginning to take hold in many industrial countries. Labour unions were establishing the right to collective bargaining; wages were being increased; and hours were being reduced. The idea that the citizens had
certain basic economic and social rights had been recognized in constitutions and legislations of democratic countries.

1. The League of Nations and Human Rights

After the First World War, came the provisions of League of Nations Charter. The Covenant of the League of Nations reflected the very limited international concern with human rights. The phrase, 'human rights and fundamental freedoms' did not appear in the Covenant. The drafters of the Covenant were pre-occupied with the maintenance of international peace and security, the pacific settlement of disputes, the establishment of a mandates system for former German and Ottoman territories, and the protection of minorities in Central Europe. Neither the Council nor the Assembly of the League subsequently dealt with questions of human rights. The whole sale and systematic suppression of human liberty in Communist Russia, Fascist Italy, and Nazi Germany went officially unnoticed by the League, although the implications of these acts of tyranny were recognized by many of its member States.\(^{22}\)

The International Labour Organization which was set up in 1919, working in collaboration with League of Nations, did a lot of work in the field of human rights. The ILO was established on the basis of the realization that universal peace could be achieved only if it were based on social justice. The Assembly of the League endorsed in 1925, the Geneva Declaration of the Rights of the Child. International action to eliminate the worst social evils like slavery, forced labour, the traffic in narcotics, and the traffic in women and children was greatly strengthened under the League. In particular, the development of conventions and recommendations by the ILO emphasized a new international concern in labour questions — wages, working hours, working conditions and social security. These activities of the League reflect the growing acceptance of the concept that the affairs of labour were matters of international as well as national concern.\(^{23}\)
In two fields of human rights, the League of Nations made a significant advance over the past. These fields are regulation of mandated territories and minorities system. The activities of the League in both these fields represented a part international concern with the human rights of individuals living in territories formerly governed by the enemy powers, and in part, the growing international concern with the right of self-determination of peoples and nations.

The International Labour Organization and the League of Nations thus touched some aspects of the field of human rights. Concern was shown especially in the fields of slavery, forced labour, mandated territories and minorities. However, the traditional concept that the civil, political, economic, social, and cultural rights of the individual were strictly a concern of the nation state was respected. The major work of the League and the ILO was to provide an efficient system for developing and coordinating new international machinery for economic and social co-operation rather than to define rights and to device measures for promoting them.

2. The United Nations Charter and Human Rights

The Second World War marked a turning point in the development of international concern for human rights. The rise of Fascism and Nazism was a ruthless challenge to the steady advance in the democratic process which assured the individual an ever-broadening field for the exercise of his rights as a free person. In Fascist Italy and Nazi Germany the individual was stripped of civil rights and was subjected to police tyranny, condemned to brutal oppression on the grounds of race and religion. During the war, a campaign of systematic extermination of the members of the Jewish race was carried on in Germany. It was a savage campaign for which human beings could provide no parallel.
It was the catalyst which produced revolutionary development in international law relating to human rights. The allied leaders and their governments, reflecting the aroused conscience of the free world, insisted that the foundations of peace must be built upon respect for human rights. In January 1941, President Roosevelt, in his message to Congress, enunciated what are termed as the Four Freedom.27 These Atlantic Charter of 1941 set forth similar objectives for the post-war world.28 In October 1942, Prime Minister Churchill promised that "when this struggle ends with the enthronement of human rights, social persecution will be ended". The Washington Conference of 1942, the Moscow Conference of 1943, and the deliberations at Dumbarton Oaks29 in 1944 gave similar assurances.

The objective of peace and of better conditions of life became major issues for discussion at San Francisco in the spring of 1945, when the establishment of a global organization – the United Nations was being considered. The Charter of the United Nations which was adopted there incorporated specific provisions relating to human rights. This marked a new beginning for the promotion and protection of human rights which was formerly vested in nation states, was now made a matter of international concern. Now it is beyond doubt that individual is not merely the object of international law but also is a subject of international law and is directly protected by it and in some cases can seek his own remedy. So, the human rights provisions of the Charter reflect the reaction of the international community to the horrors of the war and the regimes which unleashed it.

The human rights programme of the United Nations signifies a bold attempt for the recognition of the rights of individual as a subject of vital international concern. In the whole history of mankind it has been the first fruitful institutionalized endeavour in this direction. It is the contemporary culmination of man’s long struggle for all basic human values.30 The pressing need for protection of individual, was emphasized by the Secretary-General

22
U Thant when he reminded in 1968 international conference on Human Rights at Teheran that "independently of international and internal conflicts, any observer of present-day realities can hardly fail to be alarmed by the persistence or even the increase of violence and brutality in today's world. Massacres, tortures, arbitrary arrests, including cruel detentions of those who are already victims of various forms of discrimination, and summary executions are reported by information media so frequently that the natural human reaction of horror trends to be dulled.\textsuperscript{31}

The United Nations programme for "Human Rights" too often thought to be at the periphery of the purpose of United Nations, represents in fact the main core of rational objectives not only of the United Nations but also of democratic governments. It represents the converging and integration on a global scale of many movements, movements hither to restricted in a real diffusion but centuries old and rooted deep in Universal Human Nature and Civilized Culture.\textsuperscript{32}

It is significant to note that the preamble of the Charter of the United Nations begins with the words, "We the People of United Nations" rather than with traditional words "The High Contracting Parties". This new and benign trend is not by accident. This departure from the traditional trends in deliberate and pregnant with meaning. This is evident from the words which follows in the Preamble. After having resolved "to save the succeeding generations from the scourge of war", it expresses the determination "to reaffirm faith in fundamental human rights, in the dignity and worth of human person, in the equal rights of men and women and of nations large and small". Thus the Preamble indicates that the Charter of United Nations is the result of the experience of a devastating war and that it holds out hope of a lasting peace based on recognition of fundamental human rights which have been the casualties of war, on recognition of sovereign equality
of oppression and exploitation. The Charter of the United Nations has recognized the anxieties of modern man and has laid great stress on the importance of international co-ordination for the promotion of the economic and social welfare of the people of the world.

The United Nations Charter vested the task of promoting respect for human rights in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council. Thus human rights became part of an international programme sponsored by the major organs and agencies of the United Nations and articulated working programmes of appropriate commissions, committees, and sub-committees. Since the Charter came into force, many instruments have been adopted in the field of human rights.

F. HUMAN RIGHTS AND THE INDIAN CONSTITUTION

Historically, the recognition, protection, and implementation of human rights in the Constitution of India had its genesis in the forces that operated in the national struggle for independence during the British rule. After witnessing the colonial rule, every Indian was of the firm opinion that these rights are not only basic but also inalienable for them for leading a civilized life. In fact, Indians wanted the same rights and privileges that their British masters were enjoying in India. It was implicit in the birth and formation of the Indian National Congress in the year 1885.

1. EVOLUTION OF FUNDAMENTAL RIGHTS - A REPLICA OF HUMAN RIGHTS

The origin and development of the Rights and Principles, the negative and positive obligations of the State towards the social revolution can be conveniently divided into two periods.
A. Evolution of Fundamental Rights during Freedom Struggle

Perhaps the first explicit demand for fundamental rights appeared in the Constitution of India Bill, 1895. The Bill envisaged for India a constitution guaranteeing to everyone of her citizen - freedom of expression, inviolability of one's house, right to equality before law, right to property, right to personal liberty and right to free education etc.

A series of Congress resolutions adopted between 1917 and 1919 repeated the demand for civil rights and equality of status with English men. The resolutions called for equal terms and conditions in bearing arms, for 'a wider application of the system of trial by jury', and for the right of Indians 'to claim that no less than one-half the jurors should be their own countrymen'. A further resolution to this effect stated the 'emphatic opinion', that Parliament should pass a statute guaranteeing 'The Civil Rights of His Majesty's Indian subjects', which would embody provisions establishing equality before the law, a free press, free speech, etc. The statue should, moreover, lay down that political power belonged to the Indian people in the same manner as to any other people or nation in the British Empire.

By the mid-twenties, Congress and Indian leaders generally had achieved a new forcefulness and consciousness of their Indianness and of the needs of the people, thanks largely to the experience of World War I, to the disappointment of the Montague-Chelmsford reforms, to Woodrow Wilson's support for the right of self-determination, and to Gandhi's arrival on the Political scene of India. These influences reflected the tone and form of demands for the acceptance of civil rights for the Indian people. These no longer aimed at establishing the rights of Indians vis-à-vis Englishmen, a goal that was to be achieved through the Independence Movement; the purpose now was to assure liberty among Indians.
Another major development in this direction was the drafting of 'Mrs. Besant's Commonwealth of India Bill of 1925'. Article 4 of this Bill contained a list of seven Fundamental Rights:

(a) Liberty of person and security of his dwelling and property;

(b) Freedom of Conscience and the free profession and practice of religion;

(c) Free expression of opinion and the right of assembly peacefully and without arms and of forming associations or Unions;

(d) Free elementary education;

(e) Use of roads, public places, courts of justice and the like;

(f) Equality before the law, irrespective of considerations of nationality, and;

(g) Equality of the sexes.\footnote{44}

The appointment of the Simon Commission by British Government on November 8, 1927 to undertake a study of the constitutional reforms in India impelled the Indian National Congress to set up a committee to draft a Swaraj Constitution on the basis of a declaration of rights. This resolution was passed in 1927 at the 43rd Annual Session of the Indian National Congress held in Madras.\footnote{45}

The committee called for by the Madras Congress resolution came into being in May, 1928. Pandit Moti Lal Nehru was its Chairman. The Committee's report – known as Nehru Report – contained as explanation of its draft Constitution that speaks for itself. The Fundamental Rights incorporated in the Nehru Report\footnote{46} were reminiscent of those of the American and post-war European Constitutions, and were in several cases
taken word for word from the rights listed in the Commonwealth of India Bill, 1925.\textsuperscript{47}

The Nehru report declared that the first concern of Indians, was, ‘to secure the Fundamental Rights’, that have been denied to them. In writing a constitution, the report continued:

"It is obvious that our first care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances..."\textsuperscript{48}

The Indian Statutory Commission\textsuperscript{49} 1930 did not support the general demand for the enumeration and guaranteeing of Fundamental Rights. Sir John Simon in his report observed:

"We are aware that such provisions have been inserted in many constitutions, notably in those of European States formed after the war. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will and the means to make them effective."\textsuperscript{50}

Another landmark in the development of the recognition of fundamental rights was the Karachi Resolution adopted by the Congress Session held in March, 1931. It held that ‘in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions.”\textsuperscript{51}

The demand for a declaration of Fundamental Rights in constitutional document was again emphasized by several Indian leaders at the ‘Round Table Conference’ prior to the making of Government of India Act, 1935. In all three sessions of this Conference, discussions were held on the subject of inclusion of fundamental rights in the proposed Constitution Act. The Sub-Committee on minorities held detailed discussion on the subject and at the first meeting of the Sub-Committee held on December 23, 1930, Raja
Narendra Nath pointed out the need to make the question of declaration of rights unassessable by the majority in the Constitution of India. 52

K.T. Paul also emphasized the need for the inclusion of fundamental rights and to provide for a machinery to ensure that they were not violated. 53 He asserted that there should be in the statute some declaration of fundamental rights as in the case of those constitutions which have been framed subsequent to the war.

B. Shiva Rao, a representative of the Labour Organization of India to the Round Table Conference placed before the Minorities Sub-Committee meeting on December 23, 1930, a comprehensive enunciation of a draft declaration of fundamental rights. 54

During the discussion at the Sub-Committee meeting Dr. B.R. Ambedkar also pointed out the need for the inclusion of sections in the constitution for the enforcement of fundamental rights including a right of redress in case of their violation. The Secretary of State for India submitted a report to Parliament after the Round Table Conference was over.

The report observed that the Government recognizes the importance attached by the Indian leaders to the idea of making a chapter on fundamental rights, a feature in the new Indian Constitution. It also pointed out that some of the propositions discussed at the Conference could find their place in the Constitution.

The Joint Select Committee of British Parliament in the 'Government of India Bill of 1934', did not view with favour the demand for a constitutional guarantee of Fundamental Rights to British subjects in India. Expressing its agreement with the view of Simon Commission, the Committee observed:
... there are also strong practical arguments against the proposal, which may be put in the form of dilemma; for either the declaration of rights is of so abstract in nature that it has no legal effect of any kind of its legal effect will be to impose on embracing restrictions on the power of the legislature and to create a grave risk that a large number of laws may be declared invalid by the courts because inconsistent with one or other of the rights so declared: 55

However, this did not dampen the enthusiasm of Indians to have a list of fundamental rights incorporated in their Constitution. Indians rejected the British view of rights for many reasons. Foremost among them was the belief that independence meant liberty, that rights expressed this liberty and must, both in their positive and negative forms, be enshrined in the Constitution. The desire for written rights was reinforced by the suspicious of Government engendered by colonial rule - a suspicion that was certainly not diminished by the scoffing attitude of the imperial government toward such rights. During the years when independence had been more of a hope than a reality, the Congress had been loud in demanding written rights. With independence and the Congress's assumption of power near, to reject them would have created a vast and crippling suspicion of the Congress leaders' motives. The party leadership, aware of this, was eager to demonstrate its good intentions. 50

The decade of the 1940's generally was marked by a resurgence of interest in human rights. The denial of liberties under German and Russian totalitarianism and elsewhere resulted in the Atlantic Charter, the United Nations Charter, and the activities of the United Nations Human Rights Commission. Assembly members were sensitive to these currents, which supported their own faith in the validity of written rights for the Indian people. 57
That the Constitution would contain positive rights as well as negative safeguards was nearly as certain as the appearance of the written rights themselves. For as the inclusion of negative rights was primarily a product of the national revolution and of the minorities situation, so the impetus for the inclusion of the state's positive obligations came largely from the social revolution and reflected the social consciousness that had increasingly characterized the twentieth century both in India and abroad.\(^58\)

The further stage of the development of Fundamental Rights in India was 'Sapru Committee Report', published at the end of 1945. This Committee was appointed by an 'All Parties Conference in 1944-45' with Sir Tej Bahadur Sapru as its Chairman. Sapru Report gave a standing warning to all that what the Constitution demands and expects is perfect quality between one section of the community and another in the matter of political and civil rights, equality of liberty and security in the enjoyment of the freedom of religion, worship, and the pursuit of the ordinary applications of life.\(^59\)

The British Cabinet Mission in 1946 recognized the need for a written guarantee of Fundamental Rights in the Constitution of India in paragraph 19 and 20 of its statement of May 16; 1946, envisaging a Constituent Assembly for framing the Constitution of India. It recommended the setting up of an Advisory Committee for reporting to the Assembly inter-alia on Fundamental Rights.\(^60\)

The greatly increased demand for self-determination was supported by India's war-augmented power, her industry had expanded, many of her men had been trained and armed, and her people had a new, stronger sense of unity and coincided with a marked decrease in the force Britain could exert in India, occupied as the British were with Palestine and other problems abroad and war-weariness at home. It was in this atmosphere that the newly elected Labour Government announced in September 1945...
that it was contemplating the creation of a constituent body in India and ordered that national elections be held during the winter so that freshly created provincial legislatures would be ready to act as electoral bodies for a constituent assembly. Followed to this move, British government in January 1946 sent a Parliamentary Delegation to India and in March Cabinet Mission came to India. This Cabinet Mission was assigned a difficult task of assisting the Viceroy in setting up in India the machinery by which Indians can devise their own constitution and of mediating between the Congress and the Muslim League in order to find a middle ground upon which the communities of India could be constitutionally united.

There had always been conflicts of interest between Muslims and Hindus. Mr. Mohammed Ali Jinnah channelised Muslim dissatisfaction through Muslim League and propagated two-nation theory – the theory that Muslim were culturally as well as religiously a group apart, that they were neither Hindus nor Indians, and that they must seek their fulfillment in a state of their own. But the Congress view-point was the reverse of the viewpoint of Muslim League. The people of India were Indians; no matter what their religion, they were one nation. But the three members of the Cabinet Mission hoped to reconcile by a compromise plan by dividing India into three provinces on geographical basis. One province would be predominantly Muslim, one predominantly Hindu and in the third the population of the two communities would be nearly equal. Therefore, the India was to remain one state but the power of the Central Government would be confined to foreign affairs, communication and defence. Both Congress and Muslim League accepted plan hesitantly.

The Constituent Assembly was formulated by electing its members by provincial legislatures. The provinces were to be represented in the Assembly in the approximate ratio of one to one million of their population. The members of three communal categories in the legislatures, Muslim,
Sikh and General (Hindu and all other communities) would elect separately, according to their percentage of the province's population, their proportion of the provincial delegation. The Princely States were to have ninety three representatives in the Assembly, but the method of selecting them was left to consultation between the Assembly and the State's rulers.

In August, 1946 India was heading towards independence and the problem was how to bring the Congress and the League together in the Constituent Assembly and obtain their cooperation in forming the Interim Government envisaged in the Cabinet Mission Plan. The Viceroy Wavell tried his level best to bring about reconciliation. Meanwhile, the Congress went ahead with its plans for the Assembly, appointing an Experts Committee to draft fundamental rights and to arrange the early session. Therefore, the Congress, at the Viceroy's invitation, formed the Interim Government. Pandit Nehru was appointed as Vice-President of the Viceroy's Executive Council, or defacto Prime Minister. The League continued to ignore the Assembly but later on joined the Interim Government. The meeting of the Assembly was convened on December 9, 1946 but Muslim League boycotted it. On June 3, 1947 Lord Mountbatten, Viceroy announced that on 15 August England would recognize the existence of two independent states on the sub-continent, India and Pakistan. Accordingly, the Indian Independence Act passed by the British Parliament came into force on 15 August 1947, giving legally to the Constituent Assembly the status it had assumed since its formation.62

B. Fundamental Rights and Constituent Assembly

The Working Committee of the Congress drew up a resolution establishing the Advisory Committee at its meeting of 8 December 1946 as was suggested by Cabinet Mission Plan. The resolution to form an Advisory Committee was to be moved at the first session of the Assembly but it was delayed for a month in the hope that the Muslim League might enter the
Constituent Assembly. Therefore, the first meeting of India’s Constituent Assembly in New Delhi, on 9th December, 1946, was for many of its 296 members the fulfillment of a long-cherished hope. The business before the meeting was purely formal. But the meeting symbolized an event of unique significance, namely the commencement of great task of framing free India’s Constitution without outside interference or pressure.

The Constituent Assembly on 24 January 1947 voted to form the Advisory Committee. It was originally to have been elected by the Assembly, but the Congress leadership arranged that the members be chosen in off-the-floor conferences held between Assembly leaders and the chief members of each minority group. Sardar Patel became the Chairman of the Advisory Committee. The duty of this Committee was to report to the Assembly on the list of Fundamental Rights, the clauses for the protection of minorities etc. Advisory Committee in turn set up five Sub-Committee out of which one was the Sub-Committee on Fundamental Rights. Acharya Kripalani became the Chairman of this Sub-Committee.

When the Fundamental Rights Sub-Committee met for the first time on 27 February 1947, it had before it draft list of rights prepared by B.N. Rau, K.T. Shah, K.M. Munshi, B.R. Ambedkar, Haranam Singh and the Congress Expert Committee, as well as miscellaneous notes and memoranda on various aspects of rights. These lists, sometimes annotated or accompanied by explanatory memoranda were lengthy and detailed and contained both negative and positive rights taken from foreign constitutions and from the Indian documents of rights referred above.

The Fundamental Rights Sub-Committee was faced with a problem of balancing the individual liberty vis-à-vis social control. The former being necessary for fulfillment of individual’s personality and the latter for the peace and stability of our society. The members found that although there was some disagreement on technique, there was little difference on
principles. The members of the Sub-Committee quickly decided that the Fundamental Rights should be justiciable, that they should be included in the Constitution, and they decided what form these rights should take. The Rights to Freedom were drafted with only brief argument over the wording of the proviso to the Right of Freedom of Association. The Sub-Committee also adopted provisions abolishing Untouchability, protection against double jeopardy, ex-post facto laws very quickly. Equality before law, the right freely to practice religion and the protection of minorities were the other landmark of work of Sub-Committee.

After making the Fundamental Rights justiciable, the Sub-Committee included within the Rights the legal methods by which they could be secured. To do this they adopted the English device of prerogative writs, or directions in the form of writs. Munshi, Ambedkar and Ayyar strongly and actively favoured the inclusion of the right to constitutional remedies and the other members of the Sub-Committee, presented the Committee's Interim Report on Rights to the Assembly on 29 April 1947, the second day of the Third Session, Assembly received this report with great favour. No doubt, 189 amendments were proposed and a few were accepted but the content of rights and basic principles remained intact. No doubt, that the rights to be included in the Constitution were considered to be fundamental and enforceable by courts but they could not be absolute. It was decided that rights could be limited by attaching provisions to the particular right and by providing for the rights to be suspended in certain circumstances. Accordingly individual liberty, right to equality, basic freedoms etc. were passed with certain limitations. Therefore, Assembly passed Fundamental Rights which are divided into seven parts having close resemblance with human rights enshrined in various international human rights documents.
2. DIRECTIVE PRINCIPLES OF STATE POLICY AND CONSTITUENT ASSEMBLY

The fundamental rights and Directive Principles had their roots deep in the freedom struggle. They were included in the Constitution in the hope and expectation that one day the tree of true liberty would bloom in India. The Rights and Principles thus connect India’s future, present and past, adding greatly to the significance of their inclusion in the Constitution, and giving strength to the pursuit of the social revolution in India. The state is to apply the precepts contained in the Directive Principles when making laws. The Directive Principles aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from the object physical conditions that had prevented them from fulfilling their best selves.

At the first stage in the framing of the Principles, the Fundamental Rights Sub-Committee proved the wide acceptance of device of precepts and the sentiments expressed by them. The main supporters were B.N. Rau, Ayyar, Ambedkar and K.T. Shah. Actually Munshi, Ambedkar and Shah were in favour of a more vigorous social programme. They were of the opinion that there must be a specified time limit within which all the Directive Principles must be made justiciable.

The second stage took place on the floor of the Assembly in November and December 1948 during the debate on the Draft Constitution. The Assembly’s reaction to the draft principles revealed two types opinions. Firstly, that the Directives did not go far enough towards establishing a socialist state and secondly, that they should have placed greater emphasis on certain institutions and principles central to Indian practice and to Hindu thought, particularly those glorified by Gandhi’s teaching. These two reactions became evident from the number of amendments proposed to these Principles.
The majority of the amendments were for development of village life and economy and the panchayat system of village organization. Some members of the Assembly sought to make the promotion of cottage industry a government responsibility to make it incumbent upon the government to prevent the slaughter of cattle and to improve the methods of animal husbandry and agriculture. Other amendments called for the nationalization of various industries. Most of these amendments were voted down or withdrawn by their initiators. Therefore, the Directive Principles of State Policy were adopted as Part-IV of the Indian Constitution by the Assembly.

The close examination of above stated historical facts / events on international and national levels bear testimony to the belief that man's struggle for rights is as old as the history of mankind is. This concept of human rights was in rudimentary form in ancient times, in formative stage in middle ages and fully grown in the 20th century with the formation of United Nations. It is also clear that, in India, the movement for the protection of human rights started during British rule. Indian people demanded these rights from British Government. After Independence, Congress Party fulfilled its assurance by granting fundamental rights in Part-III of the Indian Constitution which bear close resemblance with human rights.
REFERENCES


2. The expression "Jus Gentium" develops in more recent times into the concept for the rulers of law regulating relations between states, i.e., international law.


5. "Mihi les esse non videtur, quae justa non fuerit".


10. The main propounders of social contract theory were Grotius, Hobbes, Locke and Rousseau. According to Grotius, Political Society rests on a 'social contract'. It is the duty of the sovereign to safeguard the citizens
because the former was given power only for that purpose. According to Hobbes, out of chaos one man came and known as Leviathan. He had superior power. People entered into a social contract and transferred all authority to sovereign. According to Locke, two social contracts were entered into i.e., Pactum Unionis and Pactum Subjectionis. From this he derived the doctrine of inalienable rights. 'Social Contract' and 'Natural, Law' received a new interpretation from Rousseau. According to him 'Social Contract' is not a historical fact but a hypothetical construction of reason. He emphasized on 'General Will'.


15. Pennsylvania, Maryland, Delaware, New Jersey and North and South Carolina.


19. One possible exception was of aliens. They were subjected to the objective minimum standard rule — an international standard which could be higher than one established by the law of the host country. But now international law recognizes rules as giving aliens 'the same rights and the same guarantees as nationals but these rights and guarantees shall in no case be less than the human rights and fundamental freedoms recognized and defined in contemporary agreements'. See, Sixth Report on International Responsibility, U.N. Doc. A/CN4/134 and Year Book on the International Law Commission, Vol. 11 (1961), pp. 46-54.


21. The most important of these were the treaties aimed at slavery and the slave trade in 1885 in the General Act of the Berlin Conference on Central Africa and in 1889, the Brussels Conference.


24. The mandate system, established by Article 22 of the Covenant, constituted an entirely new and revolutionary development in international affairs. This article proclaimed that to the German and Ottoman colonies and territories 'there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilization'. The Council of the League with the assistance of the Permanent Mandates Commission gave special attention to safeguarding the rights of inhabitants in these territories.
25. The Covenant contained no provisions concerning the minorities of Europe, but a series of treaties and declarations concluded during and after the Paris Peace Conference went even further than the mandate system in attempting to secure the rights of special groups of individuals. Special minorities treaties were concluded between the Principal Allied and Associated Powers and Czechoslovakia, Greece, Poland, Rumania, and Yugoslavia. Provisions on the rights of minorities were included in the peace treaties with Austria, Bulgaria, Hungary and Turkey. These instruments guaranteed protection of life and liberty and freedom of religion for all inhabitants of each country.


27. Freedom of speech, freedom of worship, freedom from wants, freedom from fear – "everywhere in the world".


29. The Dumbarton Oaks proposals contained only a brief reference to the promotion of human rights as one of the activities to be performed by the proposed General Assembly, and, under its authority, the Economic and Social Council. The single sentence on this subject in the proposals, which carefully stressed the political and security purposes of the new organization, was as follows: "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations, the organization should facilitate solutions of international economic, social, and other humanitarian problems and promote respect for human rights and fundamental freedoms". See, James Frederick Green, *Op. cit.*, pp.15-16.


33. This draft Bill represents the first non-official attempt at drafting a Constitution for India. Author is unknown. However, Mrs. Annie Besant, who described it as the Home Rule Bill for India, thought that it was probably issued under Lokamanya Bal Gangadhar Tilak's inspiration. The author added that he had consulted the Constitutions of Brazil and the United States in drafting the Bill. See, The Constitution of India Bill, 1895; B. Shiva Rao, The Framing of India's Constitution, Select Documents, Vol. I, The Indian Institute of Public Administration, New Delhi, 1966. pp. 5-14.

34. Art. 16 of the Constitution of India Bill, 1895.

35. Ibid., Art. 17.

36. Ibid., Art. 20.

37. Ibid., Art. 23.

38. Ibid., Art. 19.

39. Ibid., Art. 25.


41. Ibid.

42. Ibid., p.26.


46. Article 4 of this Report listed fundamental rights in XIX of its clauses. For details see, B. Shiva Rao, *op. cit.*, pp. 59-60.


49. This Commission was also popularly known as Simon Commission.


52. Indian Round Table Conference proceedings of the Sub-Committee No. III Minorities, London, 1930.


62. The Indian Independence Act made Constituent Assembly as the Constituent Assembly (Legislative) the Dominion Parliament.

63. Other members of the Fundamental Rights Sub-Committee were: Raj Kumari Amrit Kaur, Hansa Mehta, Minoo Masani, K.T. Shah, A.K. Ayyar, K.M. Munshi, Sardar Harnam Singh, Maulana Azad, B.R. Ambedkar, J. Daulat Ram, and K.M. Panikkar. K.T. Shah and K.M. Munshi were familiar with formal consideration of rights issue because both of these have been members of the Congress Experts Committee, which had drafted a list of rights for the Assembly's guidance. Dr. B.R. Ambedkar had attended the Round Table Conference and taken a strong interest in rights issues.
