CHAPTER – II

THE CONCEPT OF HUMAN RIGHTS

Human rights, generally speaking, are regarded as those fundamental and inalienable rights that are essential for all as human beings. They are, in a way, synonymous with a life of dignity and freedom. Rights of man, natural rights, fundamental rights, human rights—such terminologies have been used at different times in history, with different degrees of emphasis but in ways as to reflect one common feature—that those elementary rights are considered indispensable for the attainment of an individual's wholesome personality. For an easy understanding, this concept of human rights can be understood as one intimately linked with the concept of fair treatment according to the law and to the concept of equality. All human beings want to be treated fairly and would even rebel or resist if treated unfairly. They want their rights to be recognized, not only in terms of their similarity with others but also in terms of their individuality, their particular character and characteristics. They stand for their demands for a society which is compatible.

For instance, equality is a pre-condition for freedom. All forms of resistance, rebellion or revolution are only different forms of efforts to gain, retain or regain human rights. For the weak, the resistance may take the shape of a suicide, while for the strong this struggle may result in concrete and historical events, like in the case of the barons who exhibited the Magna Carta from King John at Runnymede (1215 AD) in order to restore rights which they believed were their due. Other forms of resistance are mass rebellion, terrorist attacks, the refusal by soldiers to obey the orders of their officers, conspiracies etc. Still other forms could be large or small
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mass- agitation's, hunger strikes, Civil disobedience, relay hunger strikes, go-slow-agitation's, pamphlets, wall writings, letters, memoranda, signature campaigns and the presentation of petitions. Thus, the entire human activity is in the direction of securing human rights (of equality and liberty) denied or curtailed by the state or the individual or a group of individuals. That is, in short, the long story of human civilization and human rights.

Human rights is, in fact, a 20th century name for what has been known as Natural Rights, or the Rights of Man. The concept of human rights, therefore, may be likened to putting old wine in new bottles. The doctrine of human rights appears to be a reinterpretation of the classical doctrine of natural rights inasmuch as it expresses virtually all the requirements of practicable reasonableness. According to RJ Vincent, human rights are the rights that everyone equally has by virtue of "their very humanity" and also by virtue of their being "grounded in our appeal to our human nature". Human rights could thus be generally defined as those rights that are inherent in man's nature and without which he cannot live as a human being. In simple terms, whatever adds to the dignified and free existence of human beings should be regarded as a human right. A human being with all the dignity and worth inherent in that person is the central subject of human rights and fundamental freedoms. The core of the concept of human rights is the respect for human personality and its absolute worth, regardless of colour, race, sex, religion and other considerations.
The most startling feature of the concept of human rights is that it is so easy to understand, so difficult to define, and impossible to ignore. The subject of human rights is highly contentious. In a general sense, the term implies the idea of the protection and promotion of civil and political rights. Human rights could be generally defined as those rights that are inherent in a man's nature, and without which he cannot live as human being. A human being, with all the dignity and worth inherent in that person, is the central subject of human rights and fundamental freedoms. In yet simple terms, whatever adds to the dignified and free existence of human beings should be regarded as human rights. Thus, without getting involved in the controversial issues of definition, human rights may be said to be those fundamental rights to which all human beings, inhabiting any part of the world, should be deemed entitled, merely by virtue of his/her having been born as a human being.²

A human right is something that pertains to all humans at all times. They are said to belong to man simply because he is a man.³ In yet another sense, human rights are a species of moral rights in which all persons are equal simply because they are human. Such rights can be arguable or justifiable through a universal set of valid moral principles.⁴

FEATURES OF HUMAN RIGHTS

Universality

Human rights and freedoms are inherent in all human beings and have found expression in constitutions and legal systems throughout the modern world, more particularly in the constitutions of the United States of America, India etc. Human
rights are not the monopoly of any one culture or of any geographical region. They are truly universal. Jan Martenson stresses the fact of the universality of human rights. Human rights are, indeed present in the cultural development of religion and philosophies in all parts of the world since the dawn of recorded history. In the simplest terms, human rights can be described as laws and practices that have evolved over the centuries to protect ordinary people, minorities groups, and oppressed races from oppressive rulers and governments.

The problem of human rights is closely linked with the relations existing between man and his social environment; more specifically, with the relationship between the individual and the state. The question is whether, in the institutions on which his life is bound to depend, it is not unrealistic to imagine that in all regions and all eras of the world, human societies have always, implicitly or explicitly, in legal terms or otherwise, defined the rights and duties or obligations of their members, specifically the nature of socially acceptable needs and ambitions, as also the restrictions required to be imposed by the need to maintain order in society. It is also a probable fact of history that in all ages and in all regions, men or women, groups or communities have raised banners of revolt against various forms of coercion or tyranny and have violated the established customs or laws, based on their own views about justice, human dignity or individual or collective freedom.

There are cogent reasons for the universality of human rights. A modern state cannot lead a life in isolation. Globalization has led to world communities becoming dependent upon each other. There is an ever-increasing interaction among countries and communities. Coexistence is thus essential for human life as
well as for human rights. If a country or state is to exist within the world community, it must pay due attention to the issue of human rights. Human rights bring co-existence with all aspects of human endeavour.\(^6\)

**THE VIENNA DECLARATION (1993) ON HUMAN RIGHTS HAS RECORDED AS FOLLOWS:**

"All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing and with same emphasis. Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing." The dismantling of the state of apartheid from South Africa was a great leap towards the universalisation of human rights. Similarly, the human rights of women and of the girl-child have received attention from the State parties to the UN Convention on the subject. In recognition of the fact that the suppression of women and girls is incompatible with the dignity and worth of the human person, there has been an attempt to address and eliminate gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudices and international trafficking. It has been rightly observed that, in recent times, "no development has been more important for the development of human rights than the trend towards internationalization".\(^7\) Because of such significant interpretations of the universality of human rights, they are now being treated as international concerns and are being considered as legitimately falling within the jurisdiction of international order and institutions.
Internationalization

The subject of human rights is an issue both of the individual as well as of the whole world. It is local as well as regional, both national and universal. In addition, it is simplistic as well as complex. In fact, the long history of human civilization is nothing but the story of the “struggle of individuals against injustice, exploitation and disdain”. Therefore, the recognition, protection and implementation of human rights is a very important and complicated concern, more so because there is no agreed definition and understanding of the term “human rights”. Over a period, the connotation of the word “right” seems to have undergone a change. In this context, the word “right” denotes a goal; for example, the individual has the right to free education, free legal aid, pollution free environment, free medical care etc., which the state is expected to provide. The protection and implementation of human rights is a legal problem, the States having become parties to a number of international treaties and agreements that would now require codification in the form of national and municipal laws.

Human rights and fundamental freedoms encompass so much of the totality of national and international life that without careful international efforts their implementation is a near impossibility. Almost all States are of the view that international agencies must be involved and authorized to act in a specified way. The international community, as organized, represented and defined by the United Nations, states in clear terms its goal of the development and welfare of mankind, which primarily includes universal respect for and observance of human rights and fundamental freedoms for all without distinction of race, colour, sex, religion, language, descent, birth or status. The United Nations Charter claims the protection
of human rights as one of its principal purposes. Subsequent to the establishment of the UN, scores of international instruments have been adopted, spelling out the norms and standards to promote universal respect and an observance of human rights and fundamental freedoms for all.

**Human Rights and Karl Marx**

Karl Marx regarded the notion of the rights of man as a bourgeois illusion; he was hostile to individualism, which underlies the classical doctrine of rights. Marx believed in humanity, in man as a “species being” and he argued that his humanity would come into its own only when men ceased to think of themselves in bourgeois terms as individuals with separate inalienable rights.

**Human Rights: Moral Rights**

A “right” is a privilege, or something that is enforceable by the law of the land where the right is granted. This is a “positive right”. There is, however, another type of right: “moral right”, which, though essential for citizens, is however not enforceable by the law of the land. Some moral rights are enforced and enforceable, while some are not. Human Rights, as listed in the United Nations Declaration of Human Rights (1948), were intended to be moral rights. Therefore, as Maurice. Cranston puts it, “Where human rights are upheld by positive law—where people have what they ought to have—human rights are both rights and positive rights.”

In classifying human rights as moral rights, it is important to take note of that which distinguishes them from other kinds of moral rights: the fact that they are universal. Many moral rights that we speak of belong to a particular people who are
in particular situation, viz. The right of a landowner, or the rights of an editor or a clergyman, or a judge or a station-master. This person's special rights arise from their special positions linked with their duties. On the contrary, human rights are not rights that derive from a particular station; they are rights that belong to a man because he is a man. Human rights are distinguished from other moral rights in their fact of possessing universality, individuality, practicability and enforceability as inherent characteristics.

Existing rights have provided the basis on which it has been possible to demand further rights. Demonstrations, strikes and civil disobedience have been some of the methods used to secure franchise rights for our people. Not only this, even governments have been voted out to secure more and more rights, in an effort to use political rights to secure more and more rights, in an effort to use political rights to secure social, economic and cultural rights. It is evident that the growth of human rights over the centuries and in different parts of the world has been fairly uneven and erratic. In any case, throughout this long journey, the law has provided the essential foundation for the growth and expansion of human rights - both in legislation as well as in litigation.

The subject of human rights as an instrument of international law is a concept that has been developing since the Second World War. The Nazi atrocities in Germany and occupied Europe, the genocide of the Jews, the Gypsies, the Slav intellectuals and professionals provided the basis for the drawing up of instrument such as the UN Charter in 1945 and the Universal Declaration of Human Rights in 1948. At the end of the World War II, when the UNO was created, one of its first
and foremost task was what Winston Churchill called, "the enthronement of human rights". Simultaneous with the approval of the Universal Declaration in 1948, the General Assembly of the UNO decided that the rights contained in it should be given some legal force. In fact, it took nearly two decades until 1966 to arrive at a suitable formulations in the two Covenants-the International Covenant on the Economic, Social and the International Covenant on Civil and Political Rights (the Civil Covenant). While the Civil Covenant could be made immediately binding on States party to the UN Charter, the cost involved in the implementation of the Social Covenant were such that many governments could not meet immediately. Therefore, the obligations stipulated in the Social Covenant were to be achieved progressively. However, the abrogation of the apartheid State particularly in South Africa, is the most prominent example of the international application of the Human Rights Covenants.

**Human Rights and the Uncovenants**

The various Instruments granting human rights are really not concerned with giving any individual or a group of individuals anything over and above the rights enjoyed by other groups, rather, the Instruments recognize the existence of disadvantaged groups and seek to ensure that the beneficiaries are able to enjoy the rights that the majority group or dominant group expect to enjoy. In other words, human rights are rights guaranteeing extra measures to secure equality, as the Permanent Court of International Justice held in 1923 and again in 1935. The ostensible purpose of human rights legislation is to help redress the balance between the weak and the strong, between the poor and the rich, and the able and disabled. The idea of human rights may appear to some people to be mere rhetoric
of moral principle, serving as a means of social control, mystifying the weak, which by its hypocrisy further oppresses the disadvantaged. In the opinion of some other critics, human rights are simply the means by which some individuals seek to avoid their obligations. On the contrary, however, human rights are a great source of strength to the weak, the poor and the disadvantaged to gain equality with those who are strong and affluent. There are over one hundred different Conventions, Covenants and Resolutions by the UN on the subject of human rights.

**Individual and Collective Rights**

Another way to look at rights is to distinguish between individual rights and collective rights. Civil and political rights have been seen by some as individual rights, and by others as collective rights. In fact, virtually all rights depend on collective provisions. For example, the right to vote may be an individual right to be exercised by each individual; but this civil right cannot be enjoyed without the intervention of public authorities or without public cost. Electoral rolls have to be prepared, polling duly supervised, votes counted and so on. Similarly, a civil right to a fair and speedy trial depends on the appointment of judges, magistrates and clerks, training for judicial work, the creation of rules of procedure, legislation and litigation. The right to association or assembly is a traditional civil right but is accorded to individuals to undertake collective action. Thus, even civil rights are both individual as well as collective. To cite a further example, the right to education, usually seen as a further example, the right to education, usually seen as a social right, also demonstrates the interdependence between collective and individual rights. Health care, social security and housing are all rights that depend on collective action by individuals. There is also the collective interest in individuals
receiving a good education, being in good health and not having to sleep on the streets. Rights can, however, be taken as individualistic in yet another sense; the individuals concerned need to take some action to ensure that they get their rights. This is true of all human rights, whether civil, political, social, economic or cultural.

For example, individuals have to apply for social security benefits; and in order to apply in a timely and effective manner, they need to know their rights. Therefore, the State has an obligation to inform the citizens and to provide the means by which the individuals are able to enforce their rights, sometimes against the State, and sometimes against other individuals or organizations. Hence the need for the education of citizens in the matter of human rights.

**Interdependence**

Sometimes it is said that some human rights are more fundamental than others are. Is a right to life more important than a human right to food, without which life cannot be sustained, or more important than a social security right? Or are they two sides of the same coin? Such questions highlight the fact that all human rights are interdependent. For example if a person does not have the right of freedom from arbitrary arrest, his right to assembly or association is of no meaning. Good health is not possible in a polluted and unsafe environment, whether at work, at home or elsewhere. The virtual ban on forced labour is an affirmation of the human dignity of each person, regardless of race, sex, class, or other characteristics. These examples only show that various human rights are interdependent. There is no clear distinction between the civil and political, the economic and social rights and the rights of solidarity.
Essentiality

A human being is said to be the highest creation of the Almighty. With his intellect and reasoning, he is at the center of all activity on the globe. According to international law, every individual has certain rights which are inherent in all individuals because of their being human, and irrespective of their caste, colour, creed, language, ideology or nationality. These rights originate with the very birth of individuals and are essentials for the adequate development of human personality and for human happiness and progress. Human rights are thus essentials for the material and moral uplift of the human race.

Inalienability

These human rights are inalienable because the enlightened conscience of the community would not permit the surrender of these rights of any person even of his own volition. These rights are inviolable because they are not only vital for the development, efflorescence and the preservation of the dignity of human personality; but also without them human beings would be reduced to the level of animals. Therefore, these rights, emanating from natural law, deserve full protection and implementation at the national and the international level.14

Human rights are thus the birthright of all human beings. The respect of human rights implies a new way of life. It implies a new source of legitimacy for a regime. Human rights will not quietly fade away as an issue in world politics because a large number of political leaders are now convinced that a government's security is linked to the protection of human rights. People and groups demand
attention to their needs and aspirations. In their perspective, human rights should be pursued because human rights are necessary for a life with human dignity.

The subject of human rights is, therefore, of universal concern, cutting across ideological, political and cultural boundaries. These rights are essential for the full development of the human personality and for human happiness. The concept of human rights has been regarded as the backbone of any democracy in the modern world.\(^{15}\)

**Human Rights: A Holistic View**

To have a holistic view of the concept and practice of human rights, it is essential to understand a few significant aspects that are vital for the survival of human right as also human beings.

**Human Rights: Legal or non-legal**

A right recognized by law, which is also enforceable, is a legal right, while a moral right has no such legal sanction behind it. According to Warton’s Law Lexicon, a right is described as “the liberty of doing or possessing something for the infringement of which there is legal sanction”. The enforceability of a right based on a recognized remedy readily available is the most distinguished characteristic of a legal right.\(^{16}\)

Accepted as one of the fundamental principles of English law, the phrase means that if a man has a right, he must have access to the means to vindicate and maintain it, and a remedy if he is injured in the exercise and enjoyment of it. Justice Holt observed that it is a vain thing to imagine a right without a remedy, for the want of right and want of a remedy and reciprocal. Keeping in mind the spirit of
this maxim, it was held in the famous Ashby vs. White case that "a man who has a right to vote at an election for Member of Parliament may maintain an action against the Returning Officer for maliciously refusing to admit his vote, though his right was never determined in Parliament, and though the person for whom he offered to vote were elected". This clearly establishes the enforceability factor associated with the concept of a right in English law. In any discussion on human rights, therefore, the paramount consideration is whether the human rights come within the category of Legal rights or whether they can at best be regarded as mere declaratory ideals to be observed by member states in their internal and inter-state conduct.\(^7\) Thus, the crucial point is whether the human rights are enforceable and are rights in the normal legal sense of the term. If human rights are present but not enforceable, they could hardly be of any practical value to human beings.

In the present-day international world, where sovereign states are subjects of law, the sanction behind law is constituted by an aggregate effect of several factors. These include notions of mutual self-interest, reciprocal advantage, fear of retaliation, world public opinion, and the odium associated with the law-breaker. There is a particular stigma attached to the violation of a pledged word enshrined in a written agreement, or the violation of a time-honored principle of customary international law.\(^8\)

It is now an established fact that the implementation of present-day human rights is best achieved through the agency of the municipal laws in each member-state of the world community. All human rights have been duly enshrined either in the Declarations or Resolutions or in regular International Conventions open to
signature and ratification. Although all these international documents have grave international significance, yet they cannot, ipso facto, become enforceable international law. At the present state of their development, these human rights are embodied in the following:

1. Customary international law, which has universal applicability;
2. Regular multi-partite treaties with appropriate in-built devices for enforcement;
3. Written Declarations and Resolutions, which, though they do not have sanctions of agreements, occupy a distinct position in any assessment of the enforceability of human rights.

Some significant point indicating the enforceability of human rights can be summed up as under:

(a) Human rights are based on "jus natural" (natural Law). It is also widely accepted that customary principles quite often rely on natural law for inspiration. The Universal Declaration on Human Rights constitutes a part of customary law, since it binds the entire world community of states, whereas conventional law, in accordance with the principle of "pacta tertis nec nocent nec procount", would bind only those states that have signed and ratified the covenants on human rights.

(b) The Declaration was adopted unanimously without dissent in the world body. There have never been any protests or challenges to this Declaration, although there have been some violations. Even these violations have been taken due note of by the august world body and subjected to strong
disapproval after long debate and expression of public opinion, as in the case of South Africa. The ultimate scrapping of the apartheid State in and by the Government of South Africa is a shining example of the pressure exerted by world opinion and of concerted action by the world community and the world body.

c) The efficacy of the UN Charter as well as the Universal Declaration on Human Rights (1948) has also been well demonstrated in a few other cases, viz.,

I. Granting of Independence to a large number of countries that were colonies of bigger powers, based on equality and non-interference in internal matters.

II. The removal of the abominable practice of Apartheid.

d) Article 8 of the Universal Declaration says, "Everyone has the right to an effective remedy in the competent national tribunal for acts violating the fundamental rights granted to him by the constitution or by law". Therefore, the municipal laws of the member states of the world community and their national judicial machinery are fully enlisted to enforce human rights as something basic and fundamental to the entire concept of justice itself.

Human rights are incorporated in the Constitution of India and those of a very large number of countries of the world, as a result of which a clearly laid out machinery is provided almost on a global basis, for the enforcement of human rights as contained in the Universal Declaration (1948). It can therefore be said to constitute a binding instrument of customary law if not of conventional law. The Rights in Part III of the Constitution of India can be
enforced by the Supreme Court of India (Article 32), in their original jurisdiction and High Courts of the States (Article 226).

The enforceability of human rights is, therefore, assured on account of their embodiment in the national laws, which have the entire sanction of the state behind them. Thus, it can be said with confidence that the Universal Declaration of Human Rights has found a place in the constitutional law of the world community of states and thereby its enforceability must be reckoned as the very highest priority, since doing so takes strength not only from the international law but also from the national laws.¹⁹ It has therefore been rightly said by Dr. Nagendra, “The Universal Declaration of Human Rights (1948) is both the law and hope not only of international law but of all laws that are destined to govern mankind”.²⁰

Human Rights and Human Duties

Rights and duties are two sides of the same coin. There is a famous maxim, “Liberty lives within restraints”. In fact, there can be no right absolutely immune from restrictions. Rights can be enjoyed by all only if all perform their assigned duties. Having said that, it is also true that excess of restriction cripples, even destroys, the scope of rights that cumulatively constitute the liberty of the individual. Therefore, in respect of human rights the question arises as to what restrictions should be imposed on these rights in order that they remain duly beneficial to all human beings. The liberties and freedoms granted under human rights can be subjected to reasonable limits as interpreted by the highest judicial courts. The Constitution of India also incorporates a special section, which delineates human duties after detailing fundamental rights. As Maurice Cranston puts it, "To claim traditional rights
of man is to claim among other things, both security and liberty. Security is not something which is at odds with human rights, because it is itself a human right, it is nothing other than the right to life restated. The private enjoyment of the right depends upon the common enjoyment of the right. The demand for liberty and security is not the demand for two things it is a demand for two things which mutually belong together.”²¹


5. Martenson, Jan, Under Secretary General, UN Human Rights, in his keynote address in the Third World Congress at New Delhi, Dec. 10-15, 1990.

6. Ibid., p.3.


10. Cranston, Maurice, op. Cit., p.3.

11. Ibid., p.7.

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