CHAPTER - III

HISTORICAL EVOLUTION

A right is the product of a given social order. The idea of the inalienable rights of human beings is, however, much older and has found expression in the writings of poets, philosophers and social reformers in antiquity and in the Middle Ages. Throughout the centuries there has been a close connection and interdependence between the idea of "natural law" and the idea of natural rights of man. The idea of the natural rights of man has been reflected in the works of the Stoics, both Greeks and Romans, and in the teachings of early Christian saints such as Thomas Aquinas, and those of medieval English Scholars of law. It is also discernible in the writings of 16th century, in the works of Hugo Grotius, the founder of modern International law, and of John Milton and John Locke. One of the earliest and perhaps the most eloquent expressions of this idea is in the body of the Greek tragedian Polyaenus, killed in the battle-field, shall be left unburied to be devoured by the vultures. Antigone, the sister of Polyaenus, rebels against this ruling, because, she claims, every man has a right to burial. Antigone, then defies the king's writ, buries the corpse, but discovered by king's men, arrested and presented before the king Creon. On being asked by the king if she knew the law, Antigone replies in affirmative and explains that she disobeyed it because it was against the conscience; it may be the law of state, but it is contrary to law of justice.
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During the 17\textsuperscript{th} century, one of the earliest and perhaps the most eloquent expressions of this idea is found in Sophocles play, Antigone. Creon, the king of Thebes, decrees that the dead body of the traitor Polynices, killed in the battle-field, shall be left unburied to be devoured by the vultures. Antigone, the sister of Polynices, rebels against this ruling, because, she claims, every man has a right to burial. Antigone, then defies the king's writ, buries the corpse, but discovered by king's men, arrested and presented before the king Creon. On being asked by the king if she knew the law, Antigone replies in affirmative and explains that she disobeyed it because it was against the conscience; it may be the law of state, but it is contrary to law of justice:
'Nor did I deem that thou, a mortal man,
Could' st by a breath annual and override
The immutable, unwritten laws of heaven:
They were not born today nor yesterday;
They die not, and none knoweth whence they sprang.'

Creon replies that a traitor cannot be allowed to go unpunished and that the state laws must be obeyed.¹ Sophocles, after all was a statesman, a general and a poet. Even though Sophocles was not a liberal, yet his sympathies were with Antigone. But supremacy of the natural law over the man-made law was clearly indicated. Upholding the same idea, even the Roman Stoics upheld this idea. Marcus Tullius Cicero said. "There is a true law, right reason, in accordance with nature; it is unalterable and eternal."

During the 17th century, and in the works of the ideologists of the French Revolution, we come across the idea familiar to us from the Greek Stoics and from Cicero's philosophical authorship, the natural law-the right law-must be the same for all people and at all times. According to this idea, since the world is governed by eternal laws of nature, so the laws and rules regarding human society are eternal and immutable. During the Age of Enlightenment, and the American and French Revolutions, we come across a new manifestation of the concept of natural law. The solemn declarations of the American and French revolutions embodied the universal principles of natural law as their basis and thereby these principles were recognized as the eternal and inviolable individual rights of man and the citizen.²
The ideology of natural law is classically presented as early as 1689 by John Locke in his essay on ‘Civil Government’. He envisaged the concept of an original state of nature where no national community or state power had been organized and where all people have the same rights and obligations in common. Locke views this state of nature, as providing everyone an entitlement of defending his right to life, freedom and property.³

Although Edmund Burke and Jeremy Bentham opposed the theory of eternal or ‘natural law’, still this concept made great contribution to the concept of human rights.⁴ ‘The idea of natural law as a universal moral law which transcends the law of states is one by which European thinking about politics has been permeated for more than two thousand years. And although it went out of fashion in the nineteenth century, it has come into favour again since the Second World War. At Nuremberg in 1945, natural law was freely invoked as the legal basis of at least some of the elements of the indictment of the Nazi leaders’.⁵

Ancient legal codes failed to recognize any area of individual freedom from state interference, and the first codification of something akin to a catalogue of rights, if not yet of all men, then at least of the nobles of the land, began to emerge in compacts between princes and feudal assemblies. One of the first attempts at codification of something like a catalogue of rights can be seen in c. 1188 A.D., when King Alfonso IX of the Kingdom of Leonso, confirmed a series of rights, including the right of the accused to a regular trial, and the right to the inviolability of life, honour, home and property, on his lords, conferred on the feudal Assembly of the Kingdom of Leon. In the Golden Bull of King Andrew II of Hungary (1222), the
1689. These ideas then travelled widely across the seas, securing grounds in the New Colonies, found their flowering in the American Declaration of Independence (1776), the Virginia Declaration of Rights (1776) and the American Bill of Rights (1791), carrying in some cases their very text as well.7 Jefferson’s famous words in Declaration of Independence in 1776 and the U.S. Constitution embodied a Bill of Rights. During the 19th and the 20th centuries, this message of liberty, equality and fraternity, so beautiful and so clearly expressed in the English, the Americans and the French Constitutions, did not enact any constitutional guarantees.

“We hold these Truths to be self-evident—that all men are created equal; that they are endowed with certain inalienable rights; that among these are Life, Liberty and pursuit of happiness.”

The trident of Equality, Liberty, and Fraternity found its most emphatic expression in human history in 1789, when the French Assembly declared the Rights of Man and Citizen. Decreed by the French National Assembly, on 20-26 August 1789, the French Declaration of the Rights of man and of the citizen, in its Article I states,

“Men are born and remain free and equal in rights; social distinctions can be based only upon public utility.”

The American Declaration of Independence (1776), the Virginia Declaration of Rights (1776), and the American Bill of Rights (1791) carried not only the ideas of the earlier English documents but in some cases their very text as well. Nor was it only England that exported its doctrine of Rights; the powerful influence of the French philosophers of the Enlightenment is visible among all the American revolutionaries. If the French philosophers had helped provide the Colonies, in its turn, gave the French an example to follow and had an enormous impact on the
events in France. The French Declaration of the Rights of Man and of the Citizen (1789) was directly inspired by earlier American examples.

The term Human Rights was introduced for the first time in the United States Declaration of Independence in 1776 and the U.S. Constitution embodied a Bill of Rights. During the 19th and the 20th centuries, this message of liberty, equality and fraternity, guaranteeing individual liberties, set forth by the English, the Americans and the French, was followed on the entire continent of Europe and also swept over the Americas, the Asia, Africa and the Carribbeans. While the Great Britain, following the tradition of its unwritten constitution, did not enact any constitutional guarantees, the Mexican constitution of 1917, the Weimar Constitution of Germany of 1919, and the Constitution of Republic of Spain in 1931, granted traditional political and civil rights to all its citizens.

Under traditional international law, the sovereign state had discretionary powers in the treatment of its nationals. When, however, the treatment meted out by a state to its own population, particularly to religious or ethnic minorities, was so arbitrary and so persistently abusive and cruel that it shocked the conscience of mankind, other states frequently took it upon themselves to threaten or to even use force in order to come to the rescue of the oppressed minority. A major example of such 'humanitarian intervention' was the action, including military action, agreed on in 1927 by Great Britain, France and Russia against the Ottoman Empire, purported to end the sufferings of the Greek population then under the Turkish rule. This eventually led to the independence of Greece, and their representation made by the
The inherent danger in the humanitarian intervention was the fact of unilateral decision of an individual or a group of states whether or not the intervention was justified and also how to intervene. Hence the doctrine underlying the humanitarian intervention could never become part of international law. Since the coming into effect of the Charter of the United Nations, with its prohibition of the unilateral use of force in international affairs, this doctrine has become a dead letter.⁸

The use of international treaties for protection of the rights of the minorities can be traced back to the 17th century, when the Treaty of Westphalia (1648), which concluded the Thirty Years War, established the principle that there should be equality of rights for both the Roman Catholics and the Protestants in Germany. In 1774, Turkey undertook, vis-à-vis Russia, to protect the Christian religion and its Churches within its territory. The Congress of Vienna of 1815, provided for the free exercise of religion, and religious equality, in various Cantons of Switzerland. The same Congress made provision for the first time to improve the civil status of the Jews. When during the 19th century, Montenegro, Serbia and Romania achieved their independence from Turkey, they, as well as Turkey itself, were forced to guarantee religious freedom and equality of rights to all its inhabitants irrespective of religion (1878).

Prohibition of Slave Trade

Beginning with the Peace Treaty of Paris (1814), throughout the 19th century, universal prohibition of the slave trade had been an object of international effort and
concern. A number of Treaty arrangements were undertaken in 1815, in 1822, and again in 1862, 1865 and 1890. Gradually the movement undertook to combat and suppress slavery as well as slave trade. In 1926, the Assembly of the League of Nations approved and opened for signature the International Slavery Convention, by which the contracting parties undertook to prevent and suppress the slave trade, and to bring about, progressively, and as soon as possible, the complete abolition of slavery in all its forms. Since then, the fight against slavery, which persists in one form or the other, has continued under auspices of the United Nations.

International Social and Labour Organizations

Towards the end of 19th century, a number of philanthropists, social reformers and economists, succeeded in arousing interest in, and enlisting support of some governments for, the idea of international social legislation. A Conference of representatives of all important European countries, was held in Berlin (1890) with a large and ambitious programme of international measures of social reforms. Against, on the initiative of some private individuals and associations, governments were persuaded to meet in Berne in 1905 and 1906 where first two multilateral labour conventions, which were the first international conventions for the protection of the human person, were concluded. While one convention prohibited the night work for women, in industrial employment, the other, the use of highly poisonous and inflammable phosphorous in the manufacture of matches. These conventions, insignificant in themselves, due to the principles involved, became landmarks in the development of the concept of human rights and modern civilisation.
Humanitarian Law of War

During the second half of the 19th century, several multilateral treaties covering aspects of the conduct of hostilities and the protection of the rights of the war victims, were concluded. Due largely to the efforts of two Swiss citizens and a Swiss society that took up their ideas and later became the nucleus of what is now the International Committee of the Red Cross, the Convention for the Amelioration of the Condition of the Wounded in Time of War was signed at Geneva in 1864. The Declaration of St. Petersbur (1868) produced a consensus that the progress of civilisation should be used to alleviate as many of the calamities of war as possible. To this end, the signatories undertook to maintain the principles then established and to try to reconcile the necessities of war with the laws of humanity. These beginnings of the humanitarian law of war were elaborated at Congresses at Brussels (1874) and at the Hague (1899, 1907). Further legal developments followed during the inter-war period (1925, 1929) and after World War II by the four Geneva Conventions for the protection of war victims of 1949. While the 19th century saw the emergence of and prominence given to the individual vis-à-vis the state, the 20th century can rightly be called the century of human rights. The forceful attempt to eliminate slavery and the slave trade during the 19th century paved the way for progress of the concept all men are born free and equal in dignity which became the most valid of all working hypotheses of human relations and also the basis of successful march of human rights on the international arena in the 20th century.

By the end of the First World War, apart from the political and civil rights, also developed the concept of economic, social and cultural rights. The idea that the
workers needed special safeguards was beginning to take hold in many industrial countries. Labour unions were establishing the right to collective bargaining. The idea that the citizens had certain basic economic and social rights had been recognized in constitutions and legislation's of democratic countries.¹⁰

After the First World War, came the League of Nations. Japan's proposal to get included in the Covenant a proposal not to discriminate in law or in fact on grounds of race or nationality was rejected by other victorious powers. The Covenant of the League of Nations reflected a very limited 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 specific settlement of the disputes, the establishment of a 'tutelage' system for former German colonies and Ottoman territories, and the protection of minorities in Central Europe. Neither the Council nor the Assembly of the League subsequently dealt with the question of human rights. The wholesale and systematic suppression of human liberty in the 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.¹¹

The Treaty of Versailles (1919) and other peace treaties ending World war I also established the International Labour Organization (ILO) with part III of the Treaty of Versailles as its constitution. The ILO made a signal contribution to the promotion of human rights. It was established on the basis of the realization that universal peace could be achieved only if it was based on social justice.
The League of Nations made, though covertly, a few under mentioned advances in the direction of achieving human rights, viz.,

1. The Assembly of the League endorsed in 1925, the Geneva Declaration of the Rights of the Child.

2. The development of the Conventions and recommendations by the ILO emphasized a new international concern in labour questions – wages, working hours, social security and working conditions.

3. International action to eliminate the worst social evils like slavery, forced labour, traffic in Narcotics, and traffic in women and children was greatly strengthened under the League.

4. In two fields of human rights, the regulation of the mandated territories and the rights of the minorities – the League of Nations made a significant advance over the past.

The activities of the League in both these fields represented a part international concern with the human rights of the individuals living in the 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 League of Nations and the Internationals Labour Organization thus touched significant aspects of the field of human rights.

In 1929, the Institute of International Law, New York (USA) prepared a Declaration of Human Rights and Duties.
World War II and After

The Second World War marked a turning point in the development of international concern for human rights. The rise of Fascism in Italy and Nazism in Germany presented a ruthless challenge to the advance of democratic process assuring the individual to exercise his rights as a free person. But in both these systems the individual was stripped of his civil rights and was subjected to police tyranny, condemned to brutal oppression on the grounds of race and religion. During the war itself, 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.

Whatever progress was achieved through the establishment of the League of Nations, the ILO and other measures taken after the World War I, were wiped out by the horrors of Fascism, National Socialism and other totalitarian systems, as well as by the ordeals of World War II itself.

The unspeakable atrocities committed on apolitical and ethnic minorities by the Axis Powers during the World War II shocked the conscience of the world. It was the catalyst which produced revolutionary development in international law relating to human rights. In a series of statements and proclamations, the preservation of human rights and justice was made one of the peace aims of the victorious Grand Alliance. In January 1941, President Roosevelt in his message to the Congress enunciated what are termed as the Four Freedoms, - Freedom of Speech, Freedom of Worship, Freedom from Want, Freedom from Fear "everywhere in the World."
The Atlantic Charter of August 14, 1941 set forth similar objectives for the post-war world. In October 1942, the British Prime Minister, Winston 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 of Dumbarton Oaks in 1944 gave similar assurances.

In 1945, the Inter American Conference passed a resolution seeking the establishment of an International Forum for the furtherance of HUMAN RIGHTS of mankind. The Allied Powers decided to usher in a new world order for promoting respect for observance of Human Rights and Fundamental Freedoms. The Atlantic Charter of August 14, 1941 was the first international instrument which emphasized the importance of "defending life, liberty, independence and religious freedom and preserving human rights and justice in every land". Under the shadow of fear and hatred generated by the shocking crimes committed against humanity, the United Nations’ Charter, adopted in 1945, gave priority to the recognition and protection of human rights. By using the phrase ‘Human Rights’, seven times in all, once in the preamble and six times in the body itself; framers of the charter expressed faith in fundamental human rights and their determination to secure them for the people of the world. (The Charter of the United Nations, in its Preamble declared, “We, the People of the United Nations determined........ to reaffirm faith in the fundamental human rights, in dignity and worth of human person, in equal rights of men and women, and of the Nations large and small......."
The Charter also declared that the purpose of the United Nations is to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect of Human Rights and for Fundamental Freedoms for all without distinction as to race, sex, language or religion. The Economic and Social Council, the principal organ of the U.N., entrusted with the task of promotion and protection of human rights formed in 1946, a Commission on Human Rights, with powers to deal with any matter concerning human rights. The commission drafted the Universal Declaration of Human Rights which was adopted by the General Assembly on 10th April, 1948. While this Universal Declaration became the epitome, the Bible on the subject of human rights, it ushered in a new era of hopes and aspirations for human civilization and was also regarded as the first step towards the formulation of an "international bill of human rights", that would exert legal as well as moral force on the international community.

Evolution of Human Rights in India

There has been an advocacy of the concept of human rights in the modern world, through various Declarations in England, France, and America, the Universal Declaration on Human Rights and various Covenants by the United Nations. This has created an impression that the concept of human rights is modern and Western in origin. Far from being so. The concept is neither entirely western nor so modern, as may be seen from the following discussion, of the growth of the concept of human rights in India. The truth is, what the West has discovered about human rights now, India had in its deep rooted traditions since time immemorial. However
The philosophy of human rights in the modern sense took shape in India during the course of the British rule.

It will be helpful to study the status of the concept of human rights as it existed and progressed from ancient to medieval and modern times up to the British rule in India.

A. ANCIENT INDIA

a) The Hindu Tradition:

A peep into our ancient Indian heritage of the sacred Veda shows that the Rig-Veda cites three civil rights, that of tana (body), skridhi (dwelling place), and jibhasi (life). But the Vedas are pre-historic; they offer guidance, inter alia, on religious and social obligations. The idea of equality was germane to the Vedas. In Rgveda (5-60-5) the equality of all was declared in the following words.

"Agyeshthasoc Ak Nishthas Aitasas Bhratrom Vraghu Somagaya".

Vedic ethics idealized an equality of treatment among equals. All human beings are equal, and that conduct is moral which is based on the principle of equality. The first law of social morality is the practice of equality in matters of thought and conduct, of conference and company, "Samano mantra smaiti samani samanamanah and samani vah akuti. "Let us all live together; eat together without any feeling of animosity" were the tenets of the Rigveda. It has taken centuries in history before this concept could effloresce in the elaboration of the Fundamental Rights of the Indian Constitution.
Long before Hobbes, the epic Mahabharata described the civil liberty of the individual in a political state. Even before the 2nd century BC, we find mention of elective kingship and the laws of nature, which even kings had to obey on pain of deposition. Also, the kings were required to take a pledge never to be arbitrary and always to act according to, “whatever law there is and whatever is dictated by ethics and not opposed to politics” Our ancient Indian system was a duty-based society. The concept of absolutist monarchies had always been rejected and the supremacy of “dharma” over the kings was respected in letter and spirit. Kane has stated that the doctrine of the king can do no wrong was never acceptable to India psyche.

As stated in the Manu Smriti,

_Yatha sarvani bhutani, dhara dharayate svayam_

_Tatha sarvani bhutani, vibhrata parthivah vratam_

“The king should protect and support all his subjects without any discrimination, in the same manner as the Earth supports all the living beings.”

The best known ancient Indian Treatise, Arthashastra, authored by Kautilya (326-291 BC) on the subject of the principles of law and government, treats of the “duties” of a king towards his subjects rather than of divine “prerogatives”. It says,

_Pragya sukhe sukham ragyah pragyanam chahite hitam,_

_Natmatriya hitam ragyah, Pragyanam tu priya hitam_

_Tasmat nityaohito raja kuryadirkanusisanam_

“In the happiness of his subjects lies the king’s happiness; in their welfare his welfare; whatever pleases the king himself, the king shall not consider as good; but
whatever pleases his subjects, the king shall consider as good. The king shall ever
be active and discharge his duties". 18

Kautilya's Arthashastra not only affirmed and elaborated the civil and legal
rights first formulated by Manu but also added a number of economic rights. He
states that "the king shall provide the orphan, the aged, the infirm, the afflicted and
the helpless with maintenance; he shall also provide subsistence to helpless
expectant mothers and also to the children they give birth to". 19

Great, which clearly lays down the high ideals of perfect

The Shatiparva of the great epic, the Mahabharata, dwells at length on the
importance of the freedoms of the individual (civil liberties) in a state. Rules
regarding the conduct of the rulers as protectors of the citizens have been
discussed at great length in the discourses of Bhishma with Yudhishtihra. 20

According to the Hindu tradition, individual salvation (Moksha), is the foremost
among the four earthly and spiritual pursuits, viz. Dharma, Artha, and Kama. The
term "Dharma", as used in the Hindu scriptures, does not mean religion. It means
the correct norms of human conduct in accordance with his status and placement.
Indian concept of Dharma dwells more on duties and responsibilities rather than on
the rights. Essentially, the Hindu law is a code of duties. Almost all ancient

The ancient Indian legal philosophers were unanimous in

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In a later period, the most celebrated book on philosophy, Tirukkural appeared in Tamil. It contains 380 couplets on the moral duty of man and woman. The major part of the book describes almost all civil, political, economic, social and cultural rights. Written about 2000 years ago by Tiruvalluvar, the book contains well-defined ideas on freedom of criticism, curriculum of education, and freedom from corruption, and socialist pattern of society.²²

During historical times, we have a rock edict by the Maurya king Ashoka the Great, which clearly lays down the high ideals of perfect relationship between the king and his subjects. It says, "All men are my children. Just as I wish for my children that they should become endowed with all good and happiness of this world, and of the other world, so I wish for all men."²³

In Pillar Edict I, Ashoka sums up his intentions by saying that he wants the maintenance, governance, happiness and protection of the people to be regulated by dharma, and the people to follow day by day in their dependence on dharma and devotion to dharma (dhammena Palana, dhammena vidhane....). The dharma preached by him is thus another name for the moral and virtuous life and takes its stand upon the good of all religions.²⁴

The ancient Indian legal philosophers were universalists, humanists, rationalists and above all moralists, who evolved a system of legal theory which was based on higher values and ideals, i.e. on their conception of dharma that governed, in an integrated manner, all civil, religious and other actions of men in society, be it king or his subjects.²⁵ The concept of dharma, the supreme law which governed the king and the subjects alike, covered the basic principles involved in
the theory of rights, duties and freedoms. Dharma has been all pervading, governing, ordering, regulating and directing human beings in their earthly and spiritual pursuits. The idea of dharma was fully articulated in the theory of varnashrama dharma, where one's duty is defined not only in accordance with the caste to which he belongs, but also in accordance with whether he was a student, a householder, an ascetic etc. The proper working of dharma was dependent on the fact that every individual must recognize the duties he was expected to perform and act accordingly. Essentially, Hindu law is a code of duties.

The Sanskrit word used for law is dharma, which has very wide connotations. The term dharma means "one which binds people together." Sir Monier Williams used the term dharma to imply that which is established or firm, steadfast, decree, statute, ordinance, law, usage, practice, customary observance, prescribed conduct, duty, right, justice, virtue; morality and religion. The concept of dharma occurred as early as in the Rgvedic period where Varuna has been referred to as the upholder of dharma.

Dharma was also the foundation of individual as well as collective security, since the state of nature without law was equivalent to anarchy. The rules of dharma were framed by law-makers who were, by and large, members of the Brahmin caste, and who naturally tried to maintain the superiority of that caste, which was placed at the top of the ladder. But, while the Brahmins enjoyed the highest status in caste hierarchy, and had privileges higher than those afforded to other castes, the level of punishment to be meted out to them for the same faults was higher and stricter than that given to lower castes. The concept of dharma,
thus, rooted in caste, was extended to every aspect of human activity. It was, therefore, obvious that the traditional Hindu society of ancient times did not believe in the principle of equality of all before the law. Rights, were therefore extended to the privileged upper class. The lower orders had more obligations, and the lowest, the “shudras” had only obligations to perform, almost no rights or privileges to claim. In this heavily caste-ridden society, the lowest of them, the shudras, gradually got alienated and treated as untouchables. Even the status of women in society, which was as high as those of males, was gradually lowered. The right to education was concentrated among the upper castes. This helped the Brahmins to maintain their caste superiority above all others.

b) The Buddhist Tradition

Coming in as a reaction to the Brahminical order, the Buddhist tradition marked a contrast to the earlier caste system. The Buddhist monasteries, the centres of education, were not only kept open to persons of every caste, but even the syllabi had a wider range and included disciplines of a more practical interest. The Buddhist tradition rejected caste division and advocated the equality of all before the law. If judged guilty, an offender was to be punished according to the gravity of the offence, without consideration of caste or any immunities or privileges of any caste. Buddhism does not believe in discrimination or inequality simply on the basis of one’s birth, caste or colour. It clearly says:

\[
\text{Na jacca vasalo hoti, na jacca hoti brahmano I}
\]

\[
\text{Kammuna vasalo hoti, kammuna hoti brahmano II}^{31}
\]
In other words, a person is neither a shudra nor a Brahmin simply by virtue of birth, but only by virtue of bad or good actions. Not only that, if a person feels false pride over his caste, wealth or origin and treats others as inferior to him, he insults basic human dignity and consequently declines in his life:

Jatitthaddho dhanatthaddho, gotthaddho ka ya nore I
Sannatin atimanneti, tan parabhavto Mukha II.32

Regard for human dignity is the basic social message of Buddhism. Every person is enjoined upon to treat others just as he or she has a love and attachment for himself or herself:

Yath ahan tatha ete, yathe ete tatha ahan I
Attanan upaman katvan, na haneyanna ghataye II.33

Thus Buddhist thought has a comparatively wider spectrum regarding the concept of human dignity and rights than what the modern notion of human rights claims. Rules and norms professed by the Buddha are highly rational. The Buddha himself advised people not to accept his words simply because they are the Buddha’s words, but only after duly examining them with reason. Thus he provided freedom of thought and expression to the people.34

Besides, the Buddha preached belief unto oneself, to be torch bearer unto oneself by taking recourse to righteousness: “Attadipa Viharatha”.35 Baidyanath Labh concluded, “Thus one finds a distinct link between the evolution of the concept of human rights and the Buddhist Doctrines.36

Everything that has life has a right to live, and to destroy life, in whatever form, was considered a crime. Even to women, the Buddhist tradition showed
greater freedom and respect, and they were allowed to become nuns. In his edicts, the greatest of the Buddhist kings, Ashoka the Great, makes a powerful plea for social responsibility, for dignity and justice in the behavior of one man towards another, for tolerance and kindness in human relationships and for non-violence. Ashoka’s love and compassion were so sincere and intense that he declared all his subjects as his children: “Save munisa me paja”.[37] Thus, Buddhism nurtured an individualistic tradition in a republican background, with a strong support for the kind of social and moral attitude implicit in human rights. Despite a highly caste ridden society, the rights of the individual were given due importance.

B. MEDIEVAL INDIA

The Islamic Tradition

The concept of human rights got lost on its way in the dark and narrow alleys of the Middle Ages. India was under Muslim rule for several centuries. During several phases of its history Muslim rulers made specific efforts to bring upon the life-styles of their subjects and the local populace the influence of their religious tenets. Muslim rulers or Sultans followed a policy of discrimination against the Hindus. However, it was at a much later stage, during the era of the Mughal rulers, particularly that of Akbar, that the administrative policy based on human rights principles of universal reconciliation and tolerance ushered in a new era. Even this policy was reversed by the later Moghuls.

According to Islam, the nature of human beings is exceptional and man is the most perfect being in all nature. In Islam, freedom is interpreted as freedom with consent or freedom by way of submission due to the mingling of freedom with the
human condition of servitude. The Holy Quran, the religious book of Islam, reiterates that there shall be no compulsion in religion.\textsuperscript{38}

To kill a living being is one of the most formal prohibitions of the Holy Quran.\textsuperscript{39} Only the state and its representatives may approve the death of a man or an animal. But the law of retaliation, in the case of a murder, is recognised by the Muslim law.\textsuperscript{40} Similarly, the right of work, the right to secondary needs, and the right to own property are clearly defined in the Quranic verses.

However, the status of women under Muslim law has often invited criticism from some quarters. It is said that women under Muslim law lack independence, freedom and activity of their own; in short, they live in a condition of slavery. But several Islamic philosophers vehemently deny this accusation by quoting the Quran.\textsuperscript{41} In Islamic jurisprudence, equality is conceived as the rights and duties of each sex, as based on human nature. The distinction between the sexes is based on natural law and is justified in the Quran by the fact that the physical, physiological, biological and psychological make-up of men and women is different.

Each sex compliments the other; men and women are not equal, but are equivalent, in that they have particular functions. Under Islam, Mankind has an inherent dignity, a moral quality that the drafters of the Universal Declaration of Human rights called reason and conscience. Muslims are guided in all spheres of life by justice and equality. Islamic authority relies more on human conscience than on public force. Islam contends that the civilisation of peace must be, above all, a society of moral conscience. Human rights and peace will not become a concrete reality until each person becomes conscious of his function and of his moral
obligations towards other persons and peoples. Therefore, Muslims would like to emphasize the human more than the rights. Thus the common features of all three religions of the East is their emphasis on duties rather than rights.

C. MODERN INDIA

During the British Rule

When the British ruled India, resistance to foreign rule manifested itself in the form of the demand for the fundamental freedoms and civil and political rights for the people. The first reflection was witnessed in the first war of Indian independence (1857), and later, when the Indian National Congress, which was in the vanguard of the freedom struggle, took lead in the matter.

As far back as 1895, within a decade of its establishment, the Indian National Congress prepared the 1895 Constitution of India Bill, also known as the Home Rule Bill. The bill envisaged a free India, a constitution guaranteeing every citizen basic human rights like freedom of expression, the inviolability of one’s own home, the right to property, and equality before the law.\(^{42}\)

In its special session in Bombay on August 29, 1918, under the Presidenthip of Hasan Imam, the Indian National Congress demanded the incorporation of a declaration of the rights of the people of India as British citizens. It demanded inter alia, guarantees of equality before the law, protection of liberty, life and property, freedom of speech and the press, and the rights of association. In the Delhi session of December 1918, the Indian National Congress included the principle of self-determination as one of the basic rights. Naturally, the British colonial rulers rejected the demand.
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rejected the demand.
The right of free elementary education and of admission into any educational institution maintained or aided by the state without distinction of caste or creed;

5. Equality of all citizens before the law and in civil rights;

6. The right of every citizen to the writ of habeas corpus;

7. Protection in respect of punishment under ex post facto law;

8. No discrimination against any person on grounds of religion, caste or creed in the matter of public employment, office or power or honour and in the exercise of any trade or calling;

9. The equality of right to all citizens in the matter of access to, and use of, public roads, wells and other places of public resort;

10. Freedom of combination and association for the maintenance and implementation of labour and economic conditions;

11. The right to keep and bear arms in accordance with regulations; and

12. The equality of the rights of men and women as citizens.\textsuperscript{45}

However, the Simon Commission (1927), appointed by the British government, totally rejected the demands put forth by the Nehru Committee.

The Lahore Congress (1930) declared freedom from foreign rule as a fundamental right. The Karachi Congress (1931) passed a resolution on fundamental rights and social change in three parts:

(a) Fundamental Rights and Duties;

(b) Labour; and

(c) Economic and Social Programs.
This resolution was both a declaration of rights as also the spiritual and direct antecedent of the Directive Principles. Its socialistic and humanitarian character was evident in its assertion that all political freedoms must include the real economic freedom of "the starving millions".

The question of a Bill of Rights for the Indian people came up before the Round Table Conferences, especially during the first and the third sessions, and was vigorously championed by Dr. B.R. Ambedkar, among others, for inclusion in the proposed constitution for India. But after expressing lip service to these demands, they were rejected in the third session of the conference, on the alleged grounds that it was difficult to enforce such rights.

The Government of India Act of 1935 was passed without any Bill of Rights. It provided for only a few rights and privileges under section 275, 297, 298, 299 and 300. Section 298 of the Act aimed at preventing discrimination against citizens in matters relating to holding, acquiring and disposing of property and carrying on trade in British India, on grounds of race, religion, or place of birth. Se. 299 provided that no person shall be deprived of his property in British India, save by authority of the law.

The inauguration of the Federal Court of India in 1935, as an integral part of the Act of 1935, and as the highest interpreter of the constitution, initiated an era of judicial review unprecedented in the history of India. Displaying a remarkable independence in pronouncing its decisions, the Federal Court showed a liberal
attitude towards the provinces, it acted as an ardent protector of the civil liberties of citizens, and thus became a champion of social reforms and progress.

In 1937, the Indian National Congress government, after being in office for some time in a few provinces, again voiced its demand for fundamental rights at its Calcutta session in 1937. Pt. Jawahar Lal Nehru repeatedly made it clear that the goal of the national movement continued to be the end of all exploitation and the establishment of a just, social and economic order on attaining political freedom.\textsuperscript{46}

The decade of the 1940s generally marked a resurgence of interest in human rights. The denial of liberties under the German and the Russian systems and the activities of the UN Human Rights Commission set off currents to which assembly members were sensitive.\textsuperscript{47}

A major contribution was made by the Sapru Committee report in 1945, which incorporated the declaration of perfect equality among all sections of society in the matter of political and civil rights, equality of liberty and security in the enjoyment of freedom of religion, worship and the pursuit of ordinary applications of life.

The British Cabinet Mission of 1946 accepted the soundness of the view, and recommended the constitution of an advisory committee of the Constituent Assembly to frame the constitution for an independent India. The constituent Assembly adopted a resolution on January 22, 1947, solemnly pledging itself to incorporate, in India's future constitution, lofty ideals of justice, equality and freedom, which have become the principal fibres of the preamble to the constitution. It is significant to mention that this assembly was highly inspired and influenced by
he marked resurgence of interest in human rights during the 1940’s, by the ideas and ideals of the Atlantic Charter and the UN Charter, and by the activities of the United Nations Human Rights Commission.

The Advisory Committee on Fundamental Rights, consisting of 54 members with Sardar Vallabhbhai Patel as Chairman, presented an interim and a supplementary report before the Constituent Assembly. In line with the Irish model, the Fundamental Rights Committee recommended the division of the rights in two parts. One part consisted of judicial rights in the same mould as the directive principles of the social policy of The Irish Constitution, which, though not cognisable in any court of law, should be regarded as fundamental in the governance of the country. The recommendation was duly accepted, and the decision of the assembly was incorporated by the drafting committee in Part Three of the draft constitution.

Under the chairmanship of Dr. B.R. Abedkar, the drafting committee prepared a draft of the constitution and presented it to the constituent Assembly on November 4, 1948.

Thus many basic rights, now considered important human rights, have been recognized as fundamental rights and incorporated in the Indian Constitution. The makers of our constitution had two alternatives—either to follow the British pattern, wherein there is a system of auto limitation on state powers, or to follow the American pattern of incorporating the Bill of Rights in the constitution itself. They preferred the American pattern and included a number of human rights in Part Three of the constitution, dealing specially with Fundamental Rights.
NOTES AND REFERENCES


3. Ibid., p. 33.

4. In his "Anarchical Fallacies", Jeremy Bentham wrote, "Rights is a child of law; from real rights come real rights, but from imaginary law, from "laws of nature", come imaginary rights. Natural rights is simple nonsense; natural and imprescriptible rights (an American phrase) rhetorical non-sense, nonsense upon stilts.

5. Cranston Maurice, op. Cit., p. 11.

6. Thamilmaran, V. T., op. Cit., p. 27.


8. Ibid. p. 1184.

9. Ibid. p. 1184.


13. Rig Veda, Mandala 8, Valli 49, Mantras 3,4.


16. Kane OV, Dharma Shastra ka Itihas, Vol. iii. P.

17. Manu Smriti, IX, 311.


22. Ibid., p.49.

23. Kalinga Edict 1, 3rd cen. BC

24. Radha Kumud Mukherjee, Ashoka, p.75; see Rock Edict XIII.


27. Ibid p.47.

28. Dharyate Iocohanena iti dharma.


30. Rgveda, V-63-7

31. Suttanipata, ed. and tr. Bhikshu Dharmrakshita, Motilal, Banarsidass, Delhi, 1977, p.34.


33. Ibid. p. 186.

35. Ibid. p. 130.
37. Minor Rock Edict, Jaugada.
38. Holy Quaran, sura 2, V. 256.
39. Ibid. Sura 5, V. 32.
40. Ibid Sura 2, V. 178
41. Ibid Sura 2. V. 229; Sura 4. V.1; Sura 30.V. 21.
43. Ibid., p. 22.
44. Ibid., p.22-23.
46. Ibid. p.24.