CHAPTER - II

THE CONCEPT AND DEFINITION OF HUMAN RIGHTS

THE CONCEPT OF HUMAN RIGHTS

The concept of human rights tells a detailed story of the attempts made to define basic dignity and worth of the human beings and his or her most fundamental entitlement. The denial of human rights and fundamental freedom not only is an individual and personal tragedy but also creates conditions of social and political unrest sowing the seeds of violence and conflict within and between Societies and Nations. Just to avoid these problems, various international agencies including League of Nations, United Nations Organisation, laid stress on the protection of human rights permanently, although the idea of human rights predates the United Nations.

“The basic principles of human rights' culture will survive only if people continue to see a point in it doing so. It needs to be constantly defended. “I have a right to this. It is not just what I want or need. It is my right”. There is a responsibility to be met”.

It can be easily appreciated that human rights and fundamental freedom allow us to develop fully and use our human qualities, our intelligence, our talents, and our conscience to satisfy our spiritual and other
needs. They are based on mankind’s increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. In the language of United Nations Center for human rights—Human rights could be generally defined as “those rights, which are inherent in our nature without which we cannot live as human beings”.

According to the Hindu religious views, Human rights may be considered as follows:

“As the cow protects her own new born even at the risk of her own life, so one should enlarge one’s heart infinitely with compassion for all sentient beings”[Atharva veda]. “Sarva Bhaventu-Sukhina Sarve Santu Nirmaya, Sarva Bhadrani pashyantu Ma kashchid Dukhbhag Bhawet” [Mahabharat]

The Christian religion in the Holy Bible has preached about Human rights as “Don’t do unto others what is hateful to you, The God will know. Do unto others as you would have them do unto you.”

Prophet Mohammad, who is the profounder of Muslim religion, had also advocated for human rights. Following quotation from Holy Quran\(^1\) will illustrate the concept of human rights as follows:

“All men are brothers and that non-Muslims should be treated with no less dignity and respect for their personality than Muslims. No discrimination against all persons whether black or white or whatsoever.”

The concept of human rights has gradually evolved over the past several centuries. It is immaterial whether you call these rights as inherent rights, fundamental rights or by some other name. These rights by themselves have no fixed content and has been rightly remarked by Justice Mathew as, most of them are empty vessels into which each generation has poured its content in the light of its experience. Human rights, as conceived in the last few decades of the twentieth century, are justifiable claims on behalf of all men to corporate action. They are owed to the individual by the State as well as by the organized social and economic groups which are the centres of power and authority. The concept of human rights has a dynamic nature in reference to time and space.

The United Nations Charter has provided a Constitutional basis on which the United Nations can bring about changes in the status of the individual vis-à-vis his own State. The concept of Human Rights was widened, as the United Nations has been deeply involved in the furtherance for the human rights causes ever since its inception.

Human rights could thus be defined to be the rights of an individual and the interest to be protected collectively at international and national level by the coordinated efforts with the intervention of the States in
pursuance of intended objectives. Collective wisdom is utilized for formulating basic policies on a uniform pattern, which are given recognition jointly so as to adopt and enforce them in the form of so-called human rights. And in this process even if there is any conflict of interest among various nations, it occupies insignificant position and has least regard to national boundaries. Common consensus is arrived at for the purpose of upliftment of mankind, in general and for improving a lot of downtrodden masses, in particular. In this context, it could be rightly said that a man is a human being first and foremost irrespective of where he is born to live and it is indeed a welcome development.

The basic problem that arises concerning human rights relates to their proper enforcement and this aspect varies today from State to State. This is indeed so because the first initial step in the direction of enforcement of human rights is very much confined to the national frontiers of the state where the individual resides. It would be certainly justified to presume that so far as the basic job of drafting the human rights is concerned, this job has been successfully accomplished by the efforts of member states of United Nations Organizations but the basic problem has been the effective enforcement of human rights so as to eradicate poverty and improve the standard of living of mankind.

It is apparent that any concept of human rights which is acceptable to the modern liberal democratic societies must fulfil two basic assumptions. First, the right must be equal in an effective manner. Second, there must be
an obligation on others to accept it. The natural rights does not meet these requirements.

The liberal democratic concept of human rights in the second half of the twentieth century has come to defense of the rights of the human being against abuses of power committed by the organs of the state with the help of industrialized means. It also involves the promotion of the establishment of human living conditions and the overall development of the human personality.

The main contentions of the twentieth century human rights theory are: First, the validity of human rights is established by specific legislation was, the inherent dignity of human being is not sufficient. Thus the whole concept has acquired a judicial character. Second, within the legal system the human rights issue receives an extended treatment by two branches of law, i.e., constitutional and International law. Third, the human rights are vested in all individuals and only in individuals, not in professional groups, social groups, communities, tribes, races, classes, castes, nations or other entities. Furthermore, a human being enjoys his or her human rights both as an individual and as a citizen. Fourth, the human rights concept remains immutably valid wherever human beings lead a collective life.

The above concept of human rights has been gaining wider significance and acceptance in the western liberal democratic countries that have reached the stage of advanced capitalism.
All of us belong to one family, the mankind. Every member of our family has the same fundamental and equal rights. Each of us is entitled to have these rights respected and each of us has a responsibility to protect these rights for all others. Differences of race, sex, language and colour do not change these rights. Nor the differences of property, social origin, political ideas or religious beliefs. Every one regardless of who they are and what they do or think is born with human rights. It is worth mentioning here that the subject of human rights is an universal concept. The main aim of human rights is to respect the human personality and its absolute worth, regardless of colour, race, sex, religion or other considerations. These rights are essential for the full development of the human personality and for human happiness.

Woven into the wrap and woof of human history, the concept of Human rights has been a variable and dynamic one. It has in fact varied from generation to generation and evolved with the changing times and under the constantly shifting conditions. Even within the same Society, perception of human rights may vary. Human Rights ought to be for all men and women, and is universal and is not linked to any special positions.

What shall vary in different situations and at different points will be the extent of implementation and limitation of human rights and not the content or nature of the rights themselves. Human rights are rights both of individuals and of Society, of groups, of minorities and of majorities.
DEFINITIONS OF HUMAN RIGHTS

Let us see the definitions propounded by various National and International personalities on Human Rights;

Our first Prime Minister of the independent India Pandit Jawahar Lal Nehru said:

‘Hence appropriately the process appears to be evolving towards a mandate which may be called the common law of mankind and of the one world which could no longer be split into isolated fragments because peace has been said to be indivisible so is freedom, so is prosperity’

Dr. S.D. Sharma, the then President of India described about human rights as

“It is important that, from very early times, thinkers and law-makers in our country had arrived at an extremely clear, specific and comprehensive understanding of the essential elements having a bearing on the life of the individual and his position in society, and also of the desirable relationship between the state and the individual. The most ancient literature that humanity possesses today—the Rig Veda—reveals the enlightened and refined treatment of key issues of important to human being—even in advanced stages of development of human Society.

2 Gokulesh Sharma, Human Rights and Legal Remedies, 2000, D&D Pub, p31
3 Ibid p30.
Such an outlook of humanism, as well as of vigilance, regarding protection of human rights also accounted for the clarity with which Indian thinkers developed the concept of ‘Sarva Dharma Sambhav’—providing the freedom of the individual to follow any of different streams of thought, expression, belief and religious preference. A magnificent expression of this approach comes to us from the great Mauryan Emperor Ashoka, whose stone edicts at Shahbazarhi, Kalsi and Girnar bear the imprints of enlightened philosophy and excellent law. It is evident that such initiatives followed the realization that it was absolutely essential to recognize and enforce certain rights of the individual if a well-ordered society were to be brought into existence.

Let us consider the view of justice P.N. Bhagawati on Human rights, who is now Vice-Chairman of U.N.Human Rights Committee: “Fundamental rights are of great importance for individual freedom, but these fundamental rights are a very minimal set of rights and therefore, human rights, which are derived from the inherent dignity of the human person and cover every aspect of life and not just a small number of preferred freedom against the state, have tremendous significance. For the large number of people in a developing country like India, the only solution for making fundamental rights meaningful would be restructuring the social and economic order so that they may be to able to realize their economic rights. Human rights Conference called by the United Nations General Assembly in 1968 declared that “since human rights and fundamental freedoms are indivisible, the full

realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible”.

Soli J.Sorabjee\(^5\) present Attorney General of India has opined about human rights, which is as follows:

“Protection of human rights of individuals, an abiding concern of every civilized state, assumes vital importance in the time of emergency when there is invariably vast concentration of power in the executive and considerable dilution of safeguard in which ensure protection of fundamental rights. Suspension of human rights is a concomitant feature of emergencies, there violation an inescapable consequence”.

Shree Shridath, S.Ramphal,\(^6\) Secretary-General of Commonwealth Nations has described human rights as

“We have come a long way since 1948; but we have a long way to go before we translate the commitments implicit in the Universal Declaration into performance. The record to date is far too deficient both within nations and between them, and it is also deficient at a much more personal level in terms of relations between individuals. Furthering human development is a process in which everyone has a role to play: international organizations, but perhaps, most of all, people the world over. In the pecking order of decision-making, people may seem the most lowly and ineffectual. In reality, it is people who represent our best hope for truly furthering human development and advancing the goal of the Universal Declaration”.

\(^6\) Gokulesh Sharma, Human Rights and Legal remedies, 2000, D&D pub .p14
The concept of human rights is propounded by Justice V.R.Krishna Iyer, an eminent Jurist. He has described: "Human rights and fundamental freedoms are indivisible, the full realization of civil and political rights and cultural rights, is impossible. This process of realization calls for legal positivisation, not political polemics nor diplomatic clap-trap but normative formulation. But what are human rights? I may discover that the Religion of Man is located in the Vedas, Buddhist Texts, Bible, the Quran or the holy literature or other authentic teachers to uphold human divinity. Every human being is a divine being and has the title to dignity, liberty, equality, and other basic rights. We cannot understand or evaluate human rights divorced from the historical and social context. Idle ideals and empty assertions cut no ice. The status of human rights takes us to the life-style of a society. That is why the Indian constitutional approach is soaked in the social milieu and human conditions. India is plural Society and the concept of the human rights in such society has a different and unique position."

Justice Iyer again that “I am not here, however, to in tone a lament voice, heart and mind to the entitlement of all men to political rights, civil liberties, and a fair share of social and economic opportunity and advantage, prejudice, poverty, fear, ambition and greed; these are the root causes of oppression, deprivation and unfair discrimination which must be overcome. These fundamental minorities in a democratic society are to be won and protected. A constitutional safety value has to be designed to relieve men of the pressures of excess of power. It is, I hope, helpful to take a look at the

Ibid p21.
various solutions to the constitutional problem attempted in the western world. The countries, whose legal systems derive from the Roman, built the necessary restraints into the very exercise of executive or administrative power. This was the Roman way of governing their world a plural society of immense complexity based on a rigid class structure ranging from the privileged Roman citizen to the slave labour force which had no civil rights at all. The western world of our time is making an honourable endeavor to cope with the problem. There is no single blue print for success. But I believe that modern experience shows that there is one essential feature of every solution, a constitution mechanism strong enough to prevent absolute power from lodging in any one group of society or in any institution coupled with a plain declaration of the rights and duties of man in society. Their rights and duties are those which are so fundamental that civilized man cannot survive without them; they are the just natural of mankind the just genuine of all races”.

Justice D.V. Madan\(^8\) gave an idea about human rights in an article. He said, "the concept of Human rights is the result of man’s inhumanity to man". The maxim of law is, “There is no right without a remedy”. The maxim of history has been, “There is no right without a wrong”. The story of Human rights is thus the story of human wrongs. God divided the light from the darkness and the water from the land. And man divided his fellow man into those who were considered to possess none. And he came to the conclusion that all men had certain right, which other man had no right to natural law and natural rights. These concepts were developed by the Greek and Roman.

\(^8\) AIR, 1988, Journal Section, p260.
Justice Dr. Nagendra Singh\(^9\) of International Court of Justice has defined Human rights as:

"*Respect for the human personality and its absolute worth, regardless of colour, race, sex, the very foundation of human rights. These rights are essential for the adequate development of the human personality and for human happiness and progress. Human rights may therefore be said to be those fundamental rights to which every man or woman inhabiting any part of the world should be deemed entitled merely by virtue of having been born a human being."

Justice H.R. Khanna\(^10\) quoted:

"*It is in an ambience imbued with the sanctity of human rights that Society is assured of the rule of law, an essential ingredient, and a postulate, of which is the existence of independent courts. It bears reiteration that equality before law and the equal protection of the laws are among the most vital human rights. It is basic to the effectiveness of these rights that the courts are independent. Independence of courts thus necessarily flows from the Charter of Human rights."

Justice Ranganath Misra,\(^11\) Former chairperson of National Human rights' Commission of India, has observed:

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\(^9\) Ibid., p.268
“It is an obligation which all of us have to perform. Man, wherever he lives, whatever religion he professes, whatever food he takes, is a member of one family. All of us must learn to live like a member of one family. The whole world is one family. One then we will be able to develop the culture of Human rights. In the absence of Human rights, Societies, individuals and families are disintegrating in the modern era. It is a challenge to human process. We should all be prepared and united to face the challenge of the indiscipline. I, therefore, call upon you all whether you are in a company, industry, factory, and university to face this challenge and help the commission in meeting this challenge. Every one must realize that what is prescribed by law is not for next man, or the man to follow, but for you.”

Justice Venkatchaliah, former Chairperson\(^{12}\), Human Rights Commission has defined “Human rights are rights in own nature and without which we cannot live as human beings”.

Justice Fathima Beevi\(^{13}\), the former Governor of Tamilnadu has observed that:

“The concept of human rights has assumed importance globally during the past few decades and has international significance as every country is subject to international scrutiny by the world body which indicts member-states for violations, while there is increasing widespread concern for

\(^{13}\) Gokulesh Sharma,Human Rights and Legal remedies,2000,D&D pub ,p16
universal respect and observance of human rights, gross violation of internationally recognized norms continue unabated in almost all parts of the world. The overall situation has been characterized by large scale breaches of civil and political rights, as well as economic, social and cultural rights. The rights to life, to an adequate standard of living, to freedom of expression, to protection from torture, arbitrary arrest and many of the common standards of achievements for all people and all nations, are as far from realization now, as ever. The obligations set out in the course of international conventions and multilateral treaties for the promotion and protection of human rights and same was accepted by most of the governments and flouted by them with impunity.”

Ex-chief Justice R.S. Pathak\textsuperscript{14} has described about human rights in these words: “The human rights movement represents the historical journey travelled by man ever since the beginning of an institutionalized political and social order. It was a response to that order, when the importance of the development and expression of individual personality began to acquire material significance in relation to the community. In the repeated interaction between the individual and the State, the urge to recognize a charter of basic individual rights has expressed itself in a continuous struggle which has seen the reaffirmation and evolution of the rights of the individual against the power of established authority”.

\textsuperscript{14} Human Rights in changing world R.S.Pathak,1998 ,(II.A),New Delhi,pp4,5
M.H. Beg,\textsuperscript{15} former Chief Justice of India has defined human rights as:

"\textit{Human rights imply justice, equality and freedom from arbitrary and discriminatory treatment. These cannot be subordinated to the interests of the rulers. No one can be subjected to coercion for holding particular religious beliefs. The doctrine of national sovereignty cannot justify violation of human rights.}"

Eminent Judge V.M. Tarkunde\textsuperscript{16} has attributed about the human rights as follows:

"\textit{The term human rights, in its normal usage, comprise the rights of the individual in all spheres of social life. They are exercisable by the individual against those who possess political and economic power and also against harmful social customs as untouchability in India, racialism in South Africa and inequality of women in all parts of the world. The recognition of rights in individuals also marks the recognition of certain social obligations on them. Since individual freedom can be experienced only in a moral society, the rights and duties of the individual are necessarily interconnected. Freedom and morality are the two essential components of a healthy Society}."

Shri. D.D. Basu\textsuperscript{17} defined human rights "\textit{as those minimum rights, which every individual must have against state or other public authority by}

\textsuperscript{15} Times of India, 15-2-85, p3
\textsuperscript{16} Gokulesh Sharma, Human Rights And Legal Remedies, 2000, D&D pub, p7
\textsuperscript{17} Human Rights in Constitutional Law, D D Basu 1994, (Prentice-Hall New Delhi) pp 2, 5
virtue of his being a member of human family, irrespective of any other consideration". He has also said that the concept of human rights is as old as the ancient doctrine of natural rights founded on natural law, the expression "human" is of recent origin. It is only natural rights, which eventually led to the formation of human rights.

Dr. Upendra Baxi\textsuperscript{18} has described human rights as:

\begin{quote}
"For the first time in recent history, we move from conceptions of rights as resources for individuals against state power to conception of human rights as species rights as well. And it is natural to this conception that the rights stand addressed not just to states but to international organizations as well, whose major world-historical role, all said and done, is to enunciate new human future through a reconstruction of human person whose loyalties are global or planetary. Transcendence of state sovereignty where it matters for mapping new trajectories for alternate human future can only be achieved by retooling the notion of human person, the bearer not just of the benefits but also the burden of human rights and fundamental freedoms. It is for this reason that the preamble lays such powerful stress on the centrality of the human person."
\end{quote}

Mr. M.C. Bhandare\textsuperscript{19} considered human rights as.

\begin{itemize}
\item \textsuperscript{18} Human Rights in changing world, R.S.Pathak,1998,(II.A) p349
\item \textsuperscript{19} Gokulesh Sharma, Human Rights and Legal Remedies, 2000, D&Dpub, p9
\end{itemize}
"The urge for the protection of human rights emanated out of the gross violations preceding and during the two world wars of the century. The protection of human rights, one of the war aims of the allies in the Second World War, was translated into reality with the formation of the United Nations. It was realized that only international protection and promotion of human rights can achieve international peace and progress. Thus, in the Atlantic Charter of 14 August, 1941, subscribed to and endorsed by 47 nations, the president of the United Kingdom expressed the hope, "to see established a peace which will afford to all nations, the means of dwelling in safety within their own boundaries and which will afford assurance that all the men in all the lands may live out their lives in freedom from fear and want".

Sri N.A. Palkivala observed

"The case for human rights is so strong that it almost argues itself. It is an instance of what lawyers call res ipsa loquitur—the thing speaks for itself. To attempt to define Human rights definitively, would be merely to illustrate how the human mind tries, and tries in vain, to give a more precise definition than the subject-matter warrants. Human rights may be summed up in one 'word-Liberty'. But Isaiah Berlin noted that there are more than 200 definitions of liberty; and, as Abraham Lincoln observed, the world had never had a good definition of Liberty."

\^{20} ibid,p12
Coming to the definitions given by the international personalities:

Dr. Kofi Annan, the present Secretary-General of United Nations observed,

"Human Rights are the expressions of those traditions of tolerance in all cultures that are the basis of peace and progress. Human rights, properly understood and justly interpreted, are foreign to no culture and Native to native to all nations; It is the universality of Human rights that gives them their strength and endorses them with the power to cross any border; Climb any wall; Defy any force."\(^{21}\).

Javier Perez Culliar\(^ {22}\), former Secretary General of United Nations and a noble jurist said once "The recognition of inherent dignity and of equal and inalienable rights of all members of human family is the foundation of freedom, justice and peace in the world".

Mikhail Gorbachev\(^ {23}\), former Russian Premier and Noble laureate put it very well: "the modern world today needs global strategies of life and environment protection. It should be added that modern world stands in need of human and peoples' rights protection. It is impossible to solve the one problem without confronting and solving the other".

\(^{21}\) UN Annual Report, 2001, p3.
\(^{23}\) Gokulesh Sharma, Human Rights and Legal Remedies, 2000, D&Dpub, p1
Former Secretary General of United Nations Organisation, Boutrous Gali has highlighted the importance of meeting the needs of human rights developments. He has also described that the human rights may be said to be rights that are inherent in people by virtue of being human beings, the rights that are absolutely essential for full and complete development of human personality. Generally, two categories of human rights are recognized, namely, civil and political rights and economic, cultural and social rights. However, third category has also come up but has as yet not been fully established, that includes rights to development, right to common heritage of mankind, etc. These rights have been advocated by developing countries24.

Leonid F.Evmenov25 described about human rights as follows:

"Human rights should not only be declared but be codified in legislation. Not only codified in legislation but realized according to the norms of national legislation and international human rights acts—that is the only objective condition under which humanism of any social shade can be revealed, from Mahatma Gandhi's ahimsa to Lenin's philanthropy."

Hence, it may be concluded that human rights are not a new issue. Human rights have now been taken by all in a much broader sense. There are various aspects of human rights. Along with disarmament and

24 Supra,p31.
development, human beings are essential part of the total and holistic peace and human dignity. We mean not only civil and political rights, but also the right to live with all the basic, economic, social and cultural rights of fullness, freedom, including religious freedom.

The human rights signify both rights and duties, which are interlinked. The term “Human rights” being argued as vital for a democratic society, but also an economic, social and cultural rights as well as the rights are essential components of sustainable development and therefore not possible without respect of human rights. Respect of human rights makes freedom meaningful. Human rights are meaningless in an environment of poverty and deprivation. Human rights are above politics. They are part and parcel of life in society and they concern humanity. Human rights necessarily signify human values in absolute senses: but they have greater relevance to the real well being of the individual if they are applied in the context of society. The human rights are sign and symbol of human development and peace. The whole fabric of society depends upon human rights. Without human rights, the society cannot run smoothly, and there could be many chances of crimes and disturbances in the society. The protection of human rights is a constant struggle, which cannot be won unless every man and woman participates in it.

In real practice, the human rights is the sum of all rights necessary to ensure our rights to be human and it is the duty of all peoples and
governments to create the condition headed to exercise our *right to be human*.

Let us finally conclude with few basic essentials to qualify a particular right to be human rights. These essentials may be given as follows:

1. *It is a right of individual or group of individuals.*

2. *It can only be executed in a Society for and against state by individual or groups.*

3. *These rights are inalienable and human beings are entitled to them by birth.*

4. *It is a permanent universal and legal concept in all spheres of life.*

5. *These rights are meant to uphold human dignity and equality and to set forth liberty and fraternity to all without any kind of discrimination to all needy.*

6. *These rights are minimum requirements for survival of mankind or human beings in Societies.*

7. *These rights are protected and enforced by the Authority of society or state at all levels.*
In brief, “human rights comprise rights of individual or groups in a society in all spheres of life since inception up to the last, i.e. from birth to death. They may be exercised individually or collectively.” No specific set of rights can be created universally. These may differ from time to time and place to place, but their applicability is universal.

Hence, the human rights are “those minimum set of rights of a mankind available in all spheres of life to all individual or groups of Societies individually or collectively which is expected to be permanently inalienable since birth up to last of man or society for the purposes of survival or benefit of mankind, individual or society.”

Finally The Protection of Human Rights Act, 1993 has defined the term “Human Rights” under section 2(D) as follows;

“Human Rights means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in international covenant and enforced by courts in India”

It is to be noted that ‘The Protection of Human Rights Act, 1993’ has defined the human rights in a broad perspective to include the rights guaranteed for the individual embodied in international covenants which is enforceable in Indian courts.

Gokulesh Sharma, Human Rights and Legal Remedies, 2000, D&Dpub, p33
It is a happy feature that the human rights declared under the UDHR are no longer the subject of guarantee only to the individual nations but are guaranteed by the United Nations for all human beings. In near future, the process appears to be evolving towards a mandate which may be called the ‘Common law of mankind’ and of the world.