CHAPTER - II
CHAPTER II
CONCEPT OF HUMAN RIGHTS
- A HISTORICAL PERSPECTIVE

Human Rights today is a live issue both at the National and International Scenario. Generally, Human Rights are regarded as the Rights, which every human being is entitled to and those, which have to be protected by the State.¹ They are also regarded as Human Rights because of their universal nature and application. Human Rights however mean different things to different people depending on the context of its use and abuse. But, their perception is often conditioned by the social structure, culture, traditions and needs of the society. Since, there are no constants in human history, all our social-political concepts, norms and values are in a state of perpetual flux, woven into the wrap and woof of human history. Similarly, the basic fundamentals of Human Rights are also subjected to variation although they are dynamic in nature. Even within the same society, perception of Human Rights may vary from strata to strata, although the fundamental norm governing the concept of Human Right may remain the same, regardless of colour, race, sex, religion or other conditions. Hence, Human Rights are said to be those fundamental rights to which every man or women inhabiting in any part of the world is deemed to be entitled merely by virtue of having been born a human being.²
Further, Human rights could also be defined as those rights which are inherent and inalienable to man, simply because he is a being man. These are Moral Rights, which are derived from the humanness of every human being and they aim at ensuring the dignity of every human being. Human rights are also defined as a set of legal rights established according to the law and basis of these rights are the consent of governed that is, the consent of subjects.

This being the varied definitions of Human Rights, this concept which encompasses several rights, having the Right to reveal itself at various levels has evolved over the years. Liberalistic tradition is the first in the series as advocated by philosophers like Locke and Bentham, in which the individual human being was subjected to extreme conditions of suppression by the state. This in other words, is identified as the individualistic approach to Human rights as seen in American and French Declarations which have resulted in a hierarchy of civil and political rights for individuals. Apart from this, the individualistic approach to rights in the west, is the second level, which covers the economic system, advocating free enterprise and free competition. The legal system advocated within this system is the one that provides a body of predictable and ascertainable standards of behaviour allowing each economic factor to maintain a set of relatively safe exception as to the conduct of other social factors.
A further consideration is that, a large section of law in the west being the fruit of political struggles between contending groups have ensured their sustainability by establishing safety passage through 'Bill of Rights', and constitutions. This kind of placing restraints on the powers of aristocracy and its feudal privileges, have thus helped the evolution of Rights for the benefits of the citizens of a state contributing to their social progress and equilibrium within the society.

Gradual secularisation of religion, mainly the Christianity, it the third level which has not only helped the gradual erosion of the metaphysical components of religious tenets but also by absorbing its components into daily life and converting them into general moral precepts the contents of religion has been put into day-to-day use. Which at a later stage of its continued usage took the shape of legal rules acquiring an extra legal dimension enhancing their value. Infact, it was this, which has been instrumental in the evolution of a legal system and law. Its commitment to uphold the dictates of individual rights based on the economic necessities of a leiszez-faire system has since then been vehemently supported and argued in favour. Indeed the states have shown greater resilience towards human enhancement by minimalist interventions in the domain of individual rights, which infact has greatly contributed to all-round development of the state too.
In juxtaposition to the above school is the Marxian concept of Rights which can be considered as the fourth level. This school lays emphasis on group (social) rights rather than individual rights. Dominated by the writings of Marx and the Fabian club. Most of the writings of this school of thought particularly writings of Laski were in full agreement with the fact that full realisation of an individual self is possible only within the context of a society. Here the argument is to see and stress the fact that development is as much the concern of a society as of an individual kind. The society according to them has an interest in facilitating the advancement of individuals since it would ultimately mean social development. The Marxian frame therefore had placed the agreement that the state has an overwhelming responsibility towards its subject, it is but natural that economic and social rights, should have predominance over the individual. Where as fifth level or the modern rights theory mentioned above are either a reaction to the earlier theories or the refinements to the existing jurisprudence on Human rights thereby the setting limits to their contribution. Among them are included the theories of Rawls, Radberuch, Robert Nozik, Medougal and Dworkin. These theorists in our opinion, display a number of common characteristics including their eclectic character benefiting from each other’s insights. It is therefore, difficult to characterise their theories as simply utilitarian, natural rights, intuitive or behavioural. Secondly, these modern theorists seems to take up certain
common means to explain the tension that may exist between the concept of liberty and equality. In doing so, they employ various approaches such as the theories of resolution contending the fact that the goals of these concepts are either reconcilable or irreconcilable. Others evolve refining theories, which accept a relationship between liberty and equality characterised by shifting re-adjustments. While most theorist acknowledge the fact that there is a need to reconstruct an entire system of rights, keeping in view the popularity of the new dimension of rights - the Human Right groups are of the opinion that there is a need to work towards it.

It is in this context that the last of the levels of liberal traditions can be identified as having taken the shape of moral declarations that are necessarily to be protected by the state and theories of social and political organisation summing up in the *Lockean* formula of "life, liberty and property".

As a moral declaration, these rights inflicted the idea of respecting a person by respecting his individual freedom which in other words meant non-interference by others. Thus, rights against arbitrary coercion, physical restraint, freedom of speech and association and right against discrimination have evolved expressing their concern with the protection of the individual 'person' against state/governmental power. The doctrine of natural rights taking the view of man as a self-determining and self-
directing agent living in an environment that provides him ample resources and opportunities to pursue his own goals and choose his own actions free from interference by others also represented the struggle of men against various forms of intrusions and oppressions. They also placed great emphasis on liberty, freedom and independence, however, due to its own inherent incapabilities it became a target for attack. Towards the end of 18th century, Jeremy Bentham the founder of classical utilitarianism and analytical positivism mounted an attack on the doctrine of natural rights. In his argument he was in favour of the principle of utility as the only proper basis for determining how people should live and did not agree to the reference made to the existence of natural rights. Thus, in Bentham's view, rights were not a matter of moral or political legitimacy but owed exclusively to positive law. Despite this, it is important to know that the doctrine of natural rights had greatly influenced the drafting of British Bill of Rights (1968), Declaration of Independence (1976) and Declaration of Rights of Man and Citizen (1979) and formed a part of the US Constitution.15

The legal positivists transformed natural rights first by refining the concept of civil liberties and establishing a catalogue of specific rights and then by developing the procedural opportunities to secure these rights. Like natural rights, the traditional individual rights to freedom of speech, assembly, due process and so forth were defined as right to freedom from
interference from others. Most of the common legal rights formulated in such concepts as negligence, tort, defamation, liability are (defined) considered as prohibitions against interference with individual freedom. Supporting such an argument in the *Will Theory of Rights* which holds the view that rights make out an area within which a person’s moral and political rights are encompassed and can be considered as freedom which require only duties of non-interference. Defining it in other words, it can be framed as, rights make the enforcement of another’s duty dependent on one’s exercise of will. This theory gives an idea or it pre-supposes the idea that correlating of rights and duties and treating rights as power of waive over someone else’s duty as freedom. *H.L.A. Hart*, contemporary exponent of *Will Theory*, emphasises the correlatively of rights and duties and places great emphasis on liberty as a fundamental value. He asserts,

I quote: “If there are any moral rights at all, it follows that here is atleast one natural right, the equal right of all men to be free.”

Thus, all rights are derived from basic right to equal liberty. Rights make sense only in a system where people are left to lead their own lives and be responsible for their own decisions and action. Only when a person’s action interferes with the equal liberty of others, then he or she can be restrained by law. Many traditional liberties such as freedom of speech, religion and property can be derived from a basic right to equal
liberty. Placing high value to the freedom of action and freedom from interference, therefore speaks of the idea of rights which involves the right to freedom from interference as well as various rights to welfare or right to assistance of others. What is happening here is that the concept of 'right' is being enlarged to include not only means but also ends. What men are now claiming as rights is not merely that they be left unhindered in their pursuit of values bestowed upon them. The extension of rights in this way has enlarged with obligation to satisfy basic human needs. Hence, origin of Human rights is quite similar to that of natural rights; each is born of desperation and dedicated to action. But there are also important differences that will have important consequences. Thus, the doctrine of Human Rights appeals chiefly to the feeling of men, while the natural rights speaks more seriously about their minds. The doctrine of Human Rights on the other hand marks the return to that of natural rights but without the metaphysical foundation of the latter.

The modern doctrine of Human Rights therefore, seeks fresh grounds and content of rights; so that deficiencies of the established theories of rights are exposed and the unmet needs and neglected values are accommodated within the doctrine of rights. Keeping these theoretical perception in mind a brief glance through the historical development of Human rights is attempted here to facilitate a complete understanding of the blossoming concept of the Human Rights.
The expression “Human rights” is relatively new, having come into everyday parlance only since World War II. Replacing the phrase “Natural Right”, which fell into disfavour in part of the later phrase “the right of man” which was not universally understood to include the rights of women. Human Rights in fact, has its origin back in the ancient Greece and Rome, closely tied up to the pre-modern natural doctrines of Greek stoicism and Hellenistic stoicism. In Greco-Roman and medieval times, natural law doctrines taught mainly the duties, as distinguished from the right, of “man”. Moreover, as evident in the writing of Aristotle and St. Thomas Aquinas. These doctrines recognised the legitimacy of slavery and serfdom and in doing so, excluded perhaps the central most idea of Human Rights as they are understood today.

The teachings of Aquinas and Hugo Grotius in the European continent and the Magna Carta (1215), the Petition of Right (1628) and the English Bill of Rights (1689) in England, were proof of this change. All testified to the increasingly popular view that human beings are endowed with eternal and inalienable rights never, renounced when human kind “Contracted” to enter the social from the primitive state never diminished by the claim of “The Divine Right of Kings”. For the idea of
Human (natural) Rights to take hold as a general social need and reality, it was found necessary that the basic changes in the beliefs and practices of society take place and changes of the sort as evolved from about the 13th century, during the Renaissance and the decline of feudalism be effected. When resistance to religious intolerance and political economic bondage began the long transition of liberal nations talking in terms of freedom and equality, particularly in relation to the use of ownership of property came into fore, when the foundations for what are today called truly as Human Rights were laid. During this period reflecting the failure of rulers to meet their obligations of natural law, as well as the un-precedented commitment to individual expression and worldly experience that was characteristic of the Renaissance, the shift from natural law as duties to the natural law as right was confirmed.

It was primarily in the 17th and 18th centuries, however, to elaborate upon this modernist conception of natural law as meaning or implying natural rights, that the scientific and intellectual achievements of the 17th century, were to consolidated. The discoveries of Galileo and Sir Isaac Newton, the materialism of Thomas Hobbes, the rationalism of Rene Descartes and Gottfried Wilhelm Heibniz, the pantheism of Benedict de spinoza, the empiricism of Francis Bacon and John Locke, encouraged the belief that natural law had in the content of Universal order. With this impetus, during the 18th century, known as the 'Age of Enlightenment', a
growing confidence in human reason and in the perfectibility of human affairs consolidated its hold and became a more comprehensive expression of this period. Further, during 17th century English philosopher John Locke arguably the most important natural law theorist of modern time being in complete agreement mainly with the writings associated with (Glorious Ren) the Revolution of 1688 agreed to the fact that certain rights self-evidently pertain to individuals as human beings and that the chief among them are the rights to life, liberty (freedom from arbitrary rule) and property. Further, he argued that upon entering the civil society (pursuant to a social contract), human kind surrendered to the state only the right to enforce these natural rights and not the rights themselves. However, the state’s failure to secure these reserved natural right (the state itself being under contract to safeguard the interests of its members) gives rise to a right to popular revolution. These philosophers who postulated their theories building their argument on Locke’s thoughts embracing many and varied currents of thought prevailing them had all agreed to the fact that they all had supreme faith in reason and vigorously attacked religious and scientific dogmatism, targeting even intolerance, censorship and socio-economic restraints. They sought to discover and act upon universally valid principles harmoniously governing nature, humanity and society including the theory of the inalienable “rights ethical and social gospel”.
All this liberal intellectual ferment had, not surprisingly, great influence on the western world of the late 18th and early 19th centuries. With practical example of *English Revolution of 1688* and *the Bill of Rights*, which provided the rationale for the wave of revolutionary agitation that the then it had swept the west most notably in the North America and France. With these and the idea of Human Rights, playing a key role in the 18th and early 19th century struggles against *political absolutism*. It was indeed, seen as the failure of rules to respect the principles of freedom and equality, which had been central to the philosophy of natural law, which was from the beginning responsible for the overall development of societies. In the words of *Maurice Cranston*, a leading student of Human Rights, absolutism prompted man to claim (human or natural) rights precisely because it denied them. Despite these thoughts the idea Human Rights as natural rights was not without its detractors. Even at this otherwise receptive time, with states frequently associates themselves with religious orthodoxy the doctrine of natural rights became less and less acceptable to philosophical and political liberals. Additionally, because they were conceived in essentially absolutist "inalienable", "unalterable", "eternal" - terms, natural rights were found themselves coming to conflict increasingly with one another. Most importantly the doctrine of natural rights came under powerful philosophical and political attack from both the right and the left. In England, for example, conservatives *Edmund Burke* and *David Hume* united with liberal thinker *Jeremy Bentham* in
condemning the doctrine, the former out of fear that public affirmation of
natural rights would lead to social upheaval, the latter out of concern lest
declarations and proclamations of natural rights substitute for effective
legislation. Burke in his "Reflections on the Revolutions" in France (1790)
a believer in natural law who nonetheless denied that the "rights of man"
could be derived from it, criticised the drafters of the Declaration of the
Rights of Man and of the citizen for proclaiming the "Monstrous Fiction"
of human equality, which he argued, serves but to inspire "false ideas and
vain expectations in men destined to travel in the obscure walk of
caborious life. Bentham, founder of Utilitarianism on the other hand,
placing his thoughts in this direction submits that "Right" is the child of
law, from real law comes real rights: but from imaginary laws, from law of
nature, comes imaginary rights. Placing his agreement on these lines he
regarded natural rights as simple nonsense to quote:

"Natural and imprescriptible rights, rhetorical nonsense,
nonsense upon stilts".

Hume, arguing in his way infact, agreed with Bentham's view as
insisted that natural law and natural rights are unreal metaphysical
phenomena.
These assaults upon natural law and natural rights, which began during the late 19th and early 20th centuries once again met their saviour, John Stuart Mill, who despite his vigorous defence of liberty, proclaimed that rights ultimately are founded on utility. The German jurist Friedrich Karl Von Sauigny, England’s Sir Henry Maine and other historicalists placing similar arguments emphasized that rights are a function of cultural and environmental variables unique to particular communities. Opposing such a thinking once again it was the jurist John Austin and the philosopher Ludwig Wittgenstein respectively who insisted, that the only law is “the command of the sovereign” and that it is the only truth which can be established by verifiable experience. By the time of world war there were scarcely any theorists who would or could defend the ‘rights of man’ along the lines of natural law. Indeed, under the influence of 19th century German idealism and parallel expressions of rising European nationalism, there were some like Marxists, for example who, although not rejecting individual rights altogether, maintained that rights from whatever source derived belong to communities or to the whole of the societies and nations pre-eminently. Yet, despite having its heyday the natural rights proved short to completely strengthens the idea of Human Rights, nonetheless, endured in one form or another. The abolition of slavery, factory legislation, popular education, trade unionism, the universal suffrage movement these and other examples of 19th century reformist impulse afford apples evidence that the idea was not being extinguished even if its
transempirical derivation had become a matter of general skepticism. But it
was not until the rise and fall of Nazi Germany that the idea of rights i.e.,
Human Rights came truly into its own. The laws authorizing the
dispossession and extermination of Jews and other minorities, the laws
permitting arbitrary police search and seizure, the laws condoning
imprisonment, torture and execution without public trial—these and similar
obscenities brought home the realisation that law and morality, if they are
to be deserving of the name, cannot be grounded in a purely utilitarian,
idealistic, or other consequentialist doctrine. In the post war period,
realising the atrocities on Human Beings by the 'state' ventures, reason
prevailed upon the actors in the war. German obscenity, Russian
conservative time of thought, falling morale of Britain and its weakened
double standards, freedom to the newly born nations, emerging
Americanism— all lead to the rationale thought of institutionalising
protective mechanism for Human Rights resulting in the establishment of
United Nations after they witnessed the failure of the league.

**Human Rights and the United Nations:**

The Charter of the United Nations (1945) begins by reaffirming a;

"Faith in fundamental Human Rights, in the dignity and
worth of the human person. In the equal rights of Men and
Women and nations large and small".
It states that the purposes of United Nations are, among other things, to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples and to anchor international co-operation in promoting and encouraging respect for Human Rights and for fundamental freedoms for all without distinction as to race, sex, language or religion. In its two articles, all its members "pledge themselves to take joint and separate action in co-operation with the organisation", for the achievement of these and related purposes. It is to be noted, however, that a proposal to ensure the protection as well as the promotion of Human Rights was explicitly rejected at the San Francisco conference establishing the United Nations.²²

Additionally the charter expressly provides that nothing in it "shall authorise United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State" except upon a Security Council finding of a "threat to the peace, breach of the peace or act of aggression".²³ Further, although, typical of major constitutive instruments, the charter it is observed in conspicuously general and vague in its clauses related to Human Rights to among others. Thus, not surprisingly, the reconciliation of the charter's Human Rights provisions with the charter's drafting history and its "domestic jurisdiction" clause has given rise to not a little legal and political controversy. Some authorities have argued that, in
becoming parties to the charter, states accept no more than a nebulous promotional obligation towards Human Rights safeguards in member states. Other insists that the charter's Human Rights whatever isolation they may have "enjoyed" in the past, no longer can be considered matters "essentially within the domestic jurisdiction" of states.24

When all is said and done, however, it is clear from the actual practice of the Nations that the problem of resolving these opposing contentions has proved somewhat less formidable than the statements of governments and the opinions of scholars might lead one to assume. Neither the charter's drafting history nor its "domestic jurisdiction" clause or indeed, its generality and vagueness in respect of Human Rights has prevented the United Nations on the basis of individual petitions, statements from witness, state complaints and reports from interested non-governmental organisations from investigating, discussion and evaluating specific Human Rights situations. Nor have they prevented it from recommending or prescribing concrete action in relation to them at least not in the case of "a consistent pattern of gross violations" of Human rights, provided, there has been a majority persuasive enough to force the action desired (as in the imposition by Security Council in 1977 of a mandatory arms embargo against South Africa). Of course, governments usually are protective of their sovereignty or domestic jurisdiction. Also, the United Nations organs responsible for the promotion of Human Rights
suffer from most of the same disabilities that afflict the United Nations as a whole, in particular are absence of supranational authority and the presume of divine power politics. Hence, it cannot be expected that United Nation's action in defence of Human Rights will be normally either shift or categorically effective. Nevertheless, assuming some political will, the legal obstacles to United Nations enforcement of Human Rights are not insurmountable.25

Primary responsibility for the promotion of Human Rights under the United Nations charter rests in the General Assembly and under its authority, in the Economic and Social Council and its subsidiary body, the United Nation's central policy organ in the Human Rights field. Much of the commissions activity, initiated by subsidiary working groups, is investigatory, evaluative and advisory in character and the commission annually establishes a working group to consider and make recommendations concerning alleged "gross violations" of Human Rights referred it by its sub-commission on prevention of discrimination and protection of minorities (on the basis of communications from individuals and groups, pursuant to resolution 1970 of the United Nations Economic and Social Council and sometimes on the basis of investigations by the sub-commission or one of its working groups). Also, the commission has appointed special representatives and envoys to examine Human Rights situations on an ad-hoc basis, who, in the course of preparing their
examine, reliable information submitted in good faith, interview of interested person or make on site inspections with the co-operation of the government concerned.

In addition, the commission, together with other UN organs such as International Labour Organisation (ILO), the UN Educational, Scientific and Cultural Organisation (UNESCO) and the UN Commission on the status of women, draft Human Rights standards and has prepared a number of international Human Rights instruments. Among the most important are the Universal Declaration of Human Rights (1948) the International Covenant on Economic, Social and Cultural Rights (1976) and these are collectively known as the International Bill of Rights, these three instruments serve as touchstones for interpreting the Human Rights provisions of the UN charter. The catalogue of rights set out in the Universal Declaration of Human Rights, which was adopted without dissent by the General Assembly on December 10, 1948 (Appendix-II) is scarcely less than the sum of all the important traditional, political and civil rights of national constitutions and legal systems, including equality before the law, protection against arbitrary arrest, the right to a fair trial, freedom from ex-post facto criminal laws, the right to own property, freedom of thought, conscience and cultural rights as the right to work and to choose one's work freely, the right to equal pay for work, the right to form and
join trade union the right to rest and leisure, the right to an adequate standard of living and the right to education.  

The Universal Declaration, it must be noted here that, is not a treaty. It was meant to proclaim "a common standard of achievement for all people and all nations" rather than enforceable legal obligations. Nevertheless, partly because of an 18 year delay between its adoption and the completion for signature and ratification of the two covenant, the Universal Declaration has acquired a status juridically more important than originally intended. It has been widely used, even by national court, as a means of judging compliance with Human Rights obligations under the UN charter.

The International Covenant on Civil and Political Rights and the optional protocol: The Civil and Political rights (Appendix-III) guaranteed by this covenant, which was opened for signature on December 19, 1966, and entered into force on March 23, 1976, incorporate almost all of those proclaimed in the Universal Declaration, including the right to non-discrimination. Pursuant to the covenant, each state party undertakes to respect and to its jurisdiction the rights recognised in the covenant "Without distinction of any kind, such as race, colour, sex, language, religion and political or other opinion, national or social origin, property, birth or other status". Some rights listed in the Universal Declaration
however, such as the right to own property and the right to asylum are not included among the rights recognised in the covenant. Similarly, the covenant designates a number of rights that are not listed in the Universal Declaration, among them the right of all the people to self-determination and the right to ethnic, religious, or linguistic minorities to enjoy their own culture, to profess and practice their own religion and to use their own language, to the extent that the Universal Declaration and the covenant overlap, however, the latter is understood to explicate and help interpret the former.  

In addition, the covenant calls for the establishment of a Human Rights committee an international organ of the 18 persons elected by the parties to the convenient, serving in their individual expert capacity and charged to study reports submitted by the state parties on the measures they have adopted that effect to the right recognised the competence of the committee in this regard, the committee also may respond to allegations by one state party that another state party is not fulfilling its obligations under the covenant. If the committee is unable to resolve the problem, the matter is referred to an ad hoc conciliation commission, which eventually reports its findings on all questions of fact, plus its view on the possibilities of an amicable solution. State party that become party to the optional protocol further recognise the competence of Human Rights committee similar to
consider and act upon communications from individuals claiming to be 
victims of covenant violations.29

The International covenant on Economic, Social and Cultural 
Rights (See appendix-IV) just as the International Covenant on Civil and
Political Rights elaborates upon most of the civil and political rights 
enumerated in the Universal Declaration of Human Rights, so the 
International Covenant on Economic, Social and Cultural Rights set forth 
in the Universal Declaration: the right to work: the right to just and 
favourable conditions to work trade union rights: the right to social 
security, rights relating to culture and science. Unlike its companion 
international covenant on civil and political rights, however, this covenant 
is not geared , with modest exception to immediate implementation the 
state parties having agreed only to take steps towards achieving 
progressively the full realisation of the rights recognised in the covenant 
and then subjected to the maximum of their available resources. The 
covenant is essentially a promotional convention, stipulating objection 
more than standards and requiring implementation over time rather than all 
at once one obligation is, however, subject to immediate application, the 
enjoyment of the rights enumerated on grounds of race, colour, sex, 
language, religion or political or other opinion, national or social origin, 
property and birth or other status. Also, the international supervisory 
measures that apply to the covenant oblige the state parties to report to the
UN Economic and Social Council on the steps they have made in achieving the realisation of the enumerated rights.30

**Other UN Human Rights Conventions:**

The two above mentioned conventions are by no means the only Human Rights treaties drafted and adopted under auspices of the United Nations. Indeed, because there are far too many to detail even in abbreviated fashion, it must suffice simply to note that they address a broad range of concerns, including the prevention and punishment of the crime of genocide; the humane treatment of military and civilian personnel in time of war; the status of refugees; the protection and reduction of stateless persons; the abolition of slavery, forced labour and discrimination in employment and occupation; the elimination of all forms of racial discrimination and the suppression and punishment of the crime of apartheid; the elimination of discrimination in education; the promotion of the political rights of women and elimination of all forms of discrimination against women; and the promotion of equality of opportunity and treatment of migrant workers.

Many of these treaties are the work of the UN specialised agencies. Particularly, the International Labour Organisation (ILO) and many also provide for supervisory and enforcement mechanism for example the
committee on the elimination of Racial Discrimination established under the
International Convention on the Elimination of All Forms of Racial
Discrimination (1965) (See Appendix - V).31

Human Rights in the 20th Century:

Today, the vast majority of legal scholars, philosophers and moralists agree, that irrespective of culture or civilization, that every human being is entitled, at least in theory, to some basic rights. Indeed, except for some essentially isolated 19th century demonstrations of international humanitarian concern to be noted below the last half of the 20th century may fairly be said to mark the birth of international as well as the universal recognition of Human Rights.

In the treaty establishing the United Nations (UN), all members pledged themselves to take joint and separate action, for the achievement of "universal respect for and observance of Human Rights and fundamental freedoms for all without distinction as to race, sex, language or religion in universal declaration of Human Rights (1948) representatives from many diverse cultures endorsed the rights therein set forth "as a common standard of achievement for the people and all nations". And in the International Covenant on Civil and Political Rights (1976), the International Covenant on Economic, Social and Cultural Rights and the
each approved by the United Nations General Assembly in 1966 entered into force and effect. However, to say that there is widespread acceptance of the principle of Human Rights on the domestic and international planes is not to say that there is complete agreement about the nature of such rights or their substantive scope which is to say their definition. Some of the basic questions have yet to receive the answers whether Human Rights are to be viewed as divine, moral or legal entitlements, whether they are to be validated by intuition custom, social contract theory, principles of distributive justice, or as pre-requisites for happiness; whether they are understood as irrevocable or partially revocable; whether they are to be broad or limited in number and content.

Despite this, lack of consensus to know about nature of Human Rights is quite essential. However, a number of widely accepted and interrelated postulates may be seen to assist, if not to complete, the task of defining Human Rights.

Regardless of their ultimate origin or justification, Human Rights are understood to represent individual and group demands for the shaping and sharing of power, wealth, enlightenment and other cherished values in community process, most fundamentally the value of respect and its constituent elements of reciprocal tolerance and mutual forbearance in the pursuit of all other values. Consequently, they imply claims against persons.
and institutions who impede realisation and standards for judging the legitimacy of laws and traditions. At bottom, Human rights limit state power.

Secondly, reflecting on varying environmental circumstances, differing world news and inescapable inter-dependencies within and between value processes, Human Rights refer to a wide continuum of value claims ranging from the most justifiable to the most aspirational. Human Rights partake of both the legal and the moral orders, sometimes indistinguishably. They are expressive of both the ‘is’ and ‘ought’ in human affairs.

Thirdly, if a right is determined to be Human Right it is quintessentially general or universal in character, in other sense equally possessed by all human beings everywhere, including in certain instances even the unborn. In stack contrast to “The Divine Rights of Kings” and other such conceptions of privilege, Human Rights extend in theory to every person on earth without discrimination irrelevant of merit.

Fourthly, most assertions of Human Rights arguably not all qualified by the limitation that the rights of any particular individual or group in any particular instance are restricted as much as is necessary to secure the comparable rights or other and the aggregate of common
interest. Given this interdependency, Human Rights are sometimes designated as *prima facia* rights and it makes little or no sense to think or talk of them in absolutist terms.

Finally, Human Rights are commonly assumed to refer, "fundamental" as distinct from "non-essential" claims or "goods". Infact, some theorists go so far as to limit Human Rights to a single core right or two for example, the right to life or the right to equal freedom or opportunity. The tendency, in short, is to de-emphasize or rule out "mere wants".32

Like all normative traditions, the Human Rights tradition is a product of its time. It necessarily reflects the processes of historical continuity and change that at once and as a matter of cumulative experience, help to give it substance and form. Therefore, it is essential to understand the better meaning, content and legitimate scope of Human Rights.

*Maurice Cranston* defined that "All Human Rights are basic rights, in the fundamental sense that systematic violation of any Human Right preclude realising a life of full human dignity".33
Alan Inman viewed Human Rights as “Protective devices, which safeguard the capacities of an individual, a group or the society. Further, he says that they must be respected by every human being and primary justification of governments is that they serve to sever these rights.”

Susan Moller Okin defined Human Right as:

“Claim to something (whether a freedom a good or a benefit) of crucial importance for human life”.

Here Human rights are viewed, as respect for human being such rights will include right to life, to freedom from arbitrary, coercion and to be respected as human person.

Human Rights, generally defined as the rights which every human being is entitled to enjoy and to have it protected.

The protection of Human Rights Act 1993 defined Human Rights, as:

“Rights relating to life, liberty equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by the courts in India.”
Looking at the above definitions, Human Rights in a popular conception requires positive, social, political and judicial action to support the claims said to be rooted in ‘humanity’ and ‘personal dignity’. If one were to say that or define the meaning of ‘Human Right’ it would be best be said that concept refers to what is considered to be the legitimate entitlement, socially available to the citizens of a state in a given period or state of social development.

Human Rights therefore, no longer imply merely civil and political liberties for the individual, conceived as some kind of protection or safeguard against state power by the classical as well as contemporary Western Liberal Scholars from J.S.Mill to Rawls.

The concept of Human Rights today essentially has political, social and economic connections. It is found on the ideal of realisation of equality and liberty and most important the social, economic and political justice for all as enshrined in the constitution of India. If Human Rights are violated under the conditions prescribed for reasons of violation of rights due to neglect, hunger, poverty, the human society can stake its claim for redressal. Thus, the brief through the history of the growth of concept of Human rights clearly indicates the fact that, this Human Right did not have a bed of roses. From its conceptual level to its empirical ecalisation, one can observe that Human Right in its conceptual frame is increasingly
becomingly institution centred. While in its pragmatic friendly concept. Despite the fact that it has acquired constitutional status in its shortest domination of existence, the paradox is that, it has failed to impress upon those agencies which work parallely with these institutions safeguarding the 'individual' and his interests including his rights under the umbrella of criminal justice system of which Police Administration is a prime agency directly incharge of maintenance of law and order in the society. The chapter following this helps us to learn more about Police Administration in particular.
FOOT NOTES:


3. Ibid,

4. Ibid,

5. Ibid,


7. Ibid, p.50

8. Ibid,

9. Ibid, p.51

10. Ibid, p.52


12. Ibid,

13. Ibid,


21. Ibid., p.715.


23. Ibid., p.50.

24. Ibid.

25. Ibid.


35. Ibid., p.10.


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