CHAPTER - V

HUMAN RIGHTS: AIM AND SCOPE
In the preceding chapters we discussed the nature of rights as interpreted in the doctrines of three prominent social contract theorists – Hobbes, Locke, and Rousseau. It is clear from their doctrines that the rights granted to the individuals in a society under a particular type of contract are only rights in their restricted or limited sense for they cannot be extended to all human beings alike. Not only that, these three political philosophers have assumed and interpreted the state of nature, human nature, and man's place in the state of nature in three different Ways. There is hardly any unanimity in their respective doctrines about the nature of rights. Perhaps, what is common in their doctrines is their recognition of a state of nature, and human nature before the individuals enter into a contract to protect their private property and their own lives. By and large, the rights granted to the individuals in these societies are at the mercy of their rulers. Therefore, there is hardly any genuine human consideration in granting these rights to the individuals as subjects by their rulers. The intention of the rulers is to protect the life and property of their subjects. However, the rights that are intended to protect the life and property of the subjects do not in any way check the power of the ruler(s). In a way, these rights are granted by the ruler(s) to their subjects with a view to perpetuate peace and harmony in the society and for their own survival and continuance in the power. Unlike these rights, human rights are basic to civilized existence, and the right to life is the most basic of all rights. They are inalienable or innate rights\(^1\) possessed by every individual by virtue of their being humans. In democratic societies fundamental human
rights and freedoms are more than mere pious aspirations. They form part of the law and, therefore, their protection becomes the obligation for those who are entrusted with the task of their protection. There has been a growing awareness amongst citizens all over the world against the violation of human rights.

NATURE OF HUMAN RIGHTS

Let us start with the basic question: what is meant by human rights? Human rights are those rights that all human beings derive from the dignity and worth inherent in them and that the human being is the central subject of human rights. In a way: "human rights are those minimal rights which every individual must have against the state or other public authority by virtue of his being a member of the human family, irrespective of any other consideration." Thus, human rights are not dependent upon grant or permission of the state. Each and every state has granted a limited number of rights to its citizens. They are known as fundamental rights. In a way these rights can be equated with the doctrine of natural rights. Just as a written constitution has evolved from the concept of natural law, so the fundamental rights may be said to have sprung from the doctrine of natural rights. As the Indian Supreme Court has put it: "Fundamental rights are the modern name for the what have been traditionally known as natural rights." These rights would differ from country to country, but human rights are the rights that are common to the humankind in general. In short, whatever the rights add to the dignified and free existence of a human being should be regarded as
human rights. These are the rights which serve as a necessary prelude for the well-being of human beings for they are universally applicable to all human beings irrespective of colour, race, religion, region, and so on. For example, right to fair trial is a human right, and is equally applicable to the people of east or west.

Since time immemorial human beings have been struggling on this earth for survival. A dignified human life necessarily requires the three basic amenities, namely, food, shelter and clothing. The survival process has become difficult and precarious because the means of survival have become scarce, and unevenly owned and distributed. Consequently, some possessed all the essential means for their survival and the majority are left with partly and uneven distribution of natural resources which makes their living condition poor and miserable. Such conditions rob a majority of human being of their human dignity. At times we realised that the living conditions of the pet animals of the rich are much better when compared to the life led by a majority of human beings. For instance, there are a large number of starvation deaths in many third-world countries. As a result of this uneven distribution of natural resources and also due to the indifference of the rich towards the poor or have towards have-nots, or developed towards the underdeveloped, most of the people in various parts of the globe have been struggling to lead their life in a dignified manner. A proper and dignified living presupposes two most important things, namely, a space of one's own and the time to live in that space. However, both these factors
cannot be treated as sufficient conditions for a dignified life, unless and until they are endowed with adequate material means of production. The utilization of space depends on the availability of labour, the labour of one's own self and the labour of other(s). But, expropriation of labour of others constituted exploitation.

Hence, it is exploitation of space or utilisation of space that gave birth to the question of the right to space. Once again it is this ownership rights that ensued struggle among human beings. The expression 'humanism' is developed out of the feelings of 'pain' and 'suffering' which each and every individual undergoes in some form or the other. The first documentary use of the expression 'human rights' is to be found in the charter of the United Nations, which was adopted (after the second world war) at San Francisco on June 25, 1945. This precarious situation faced by the humans in their life-world has ultimately lead to the proclamation of the "Universal Declaration of Human Rights (UDHR)" on 10th of December, 1948 for the benefit and the furtherance of human race on the globe. Thus the notion of human rights finds its origin in the UDHR.

HUMAN RIGHTS AND FUNDAMENTAL RIGHTS

1. A 'fundamental rights' is so called because it is secured not by the 'ordinary' laws but by a 'fundamental' law which is embodied in a written constitution that cannot be altered by the ordinary process legislation.⁴
2. A written constitution can, however, be called fundamental only if it has a superiority over ordinary laws in that (1) it cannot be changed in the same process as ordinary laws; (2) the validity of the ordinary laws can be tested with reference to the fundamental laws; and (3) there is an authority (e.g. the judiciary) to declare unconstitutional an ordinary law which thus found to be inconsistent with the provision of the ordinary laws.

3. A legal rights is an interest which is protected by law and enforceable in the courts of law. While an ordinary legal right is protected and enforced by the ordinary law of the land, a fundamental rights is one which is protected and guaranteed by the written constitution of a state.

4. While an ordinary legal rights appertains to private law and denotes the relationship between two private citizens, a fundamental rights appertains to public law and is a right which an individual possess against the state itself.

5. It follows that while ordinary legal right is available against private individual, a fundamental rights is available against a state.

6. Fundamental rights be guaranteed by the fundamental law of the land, no organ of the state – legislature, executive and judicial can act in contravention of such acts.

7. In fact, no rights can be said to be fundamental if it can be overridden by the legislature, and if there is no authority
under the constitution to pronounce a law to be invalid, when it contravenes or violates such rights directly or indirectly.

One notable distinction between a human right and a fundamental right or freedom is that while a ‘human right’ as it is understood in the preamble of the Universal Declaration, 1948, is confined to natural persons as ‘members of the human family’, a constitution may guarantee fundamental rights, of which may be available not only to natural but also to the artificial persons. Again, some constitution do not extend certain fundamental rights to all human beings but confined them to citizens, e.g. Articles 15, 16(2), 18(2), 19, 29, and 30 of the Indian Constitution.

DEFINITIONS OF HUMAN RIGHTS

Even though much have spoken about human rights, it is very difficult to give crystal clear definition for the expression ‘human rights.’ Some philosophers have aptly remarked that it may be difficult to define what human rights are, but it is impossible to ignore them. According to Kant, right means “the power to create obligation.” He further stated that what is right to one person becomes a duty of another. Only rational beings can have rights. Non-rational beings can have neither rights nor duties. Only man, thus, has both rights and duties. Some philosophers have attempted to characterize rights in terms of normative categories like duties. According to them a right is just a duty seen from another
perspective. Thus Bradley, Ross and, recently Benn, Peters and Brandt – all agreed with Austin that “every right ... rests on a relative duty ... lying on a party or parties other than the party or parties in whom the rights rest.” This right – duty correlation may act in two ways. If someone has a right, other individuals must have the duty of satisfying the claim, which is recognized by that right. If the child has a right to education, his parents have the duty to provide him with that education. If the railway company has the right to be paid, the passenger has the duty of buying tickets and paying the proper fare. Thus the difference between A’s right against B and B’s duty to A is only the difference between the passive and the active voice. Wesley Hohfeld argues that a right is not only a claim, but also a liberty, a power or immunity. Richard Wasserstrom and H. J. Mectoskey have characterised rights as a basic moral entitlement possessed only by persons. In the words of Mectoskey, rights are “explained positively as entitlement to do, have, enjoy, or have done and not negatively has something against others, or as something one ought to have.”

The concept of human rights is a dynamic concept for it endeavours to adopt and accommodate itself to the needs of the day. There are some human rights, which are intrinsically bound up with the socio-economic environment of the life – world shared by the individuals. So, the changes in the socio-economic structure might affect those human rights that are conditioned by the socio-economic structure. It amounts to say that, the changes in the socio-economic
and cultural environment makes some modifications or changes in the dimensions of the content of human rights. Hence, what constitutes human rights cannot be spelt out in absolute terms, for all times and all situations.

In spite of the complications involved in defining what human rights are, there are sincere attempts to comprehend their nature. To define the expression ‘human rights’ in simple terms, human rights constitute those very rights which one possess precisely because of being a human. In other words, there are some rights, which are necessary prelude for the well being of humans. Human rights are the basic rights that provide meaning and purpose to the very human existence. To possess human rights one need not to do anything special than be born as a human being. In this sense, human rights are claims of the individual for such conditions as are essential for the fullest realisation of the innate characteristic which nature has bestowed on every human being.

Kant divided the rights into natural rights and positive rights. He used the term ‘natural rights’ in different meaning. For Kant, right is natural in the sense that it is an attribute of pure reason or a product of pure reason. They are based on the will of individuals as individuals. Kant divided natural rights into innate rights and acquired rights. By an ‘innate rights’ Kant meant ‘one that belongs to everyone by nature, independently of any juridical act.’ On the other hand an ‘acquire right’ requites such an act. This ‘innate right’
belongs to every human being by virtue his humanity, where as, the acquired right do not belong to us by virtue of our humanity. Unlike innate right, these rights can be regulated or even curtailed by law.

Another important and significant feature of human rights is that they are not earned, bought or inherited, nor are they created by any contractual authority unlike fundamental rights. Differences of sex, race, language and colour do not affect the possession of these rights. Similarly, the differences of property, social origins, political ideas or religious beliefs do not change or affect the human rights. None can be deprived of realizing these very basic rights just because he or she belongs to economically weaker section of the society, or to a religion or religious sect, which is numerically weak. The colour of one's skin may be white or black, the level of one's mental make-up may be high or low, his or her way of life may be modern or primitive to the core, yet the fact remains that essentially all of us belong to the species of human race. This fact cannot be dismissed by any stretch of imagination. Contrary to this preamble, we quite often witness the violation of human rights of those who are economically poor, socially backward, and those who belongs to religious minority. Even the discrimination against the race and gender is also very commonly witnessed.

Human rights are essential for the complete development of human personality, and for human happiness. They are indispensable for physical and mental enlistment of human race as such. These
rights are inalienable because the enlightened conscience of the community would not permit the surrender of these rights by any person even of his own volition. These rights are inviolable because they are not only vital for the development of human personality, but also to lead a dignified human life. In the absence of these rights human beings would be reduced to the level of animals. These rights are expression of what is a life minimally worth living and are based upon primary material and immaterial necessities of life. Of course, there cannot be a single opinion about what could be the quality of life minimally worth living, and about primary necessities of life and thus about human rights. Yet, some rights are regarded as fundamental like right to live with dignity, right to freedom of conscience and of course right to minimal means of subsistence. Thus human rights are based on humankind's increasingly demands for a decent and civilized life in which the inherent dignity of each and every human being will receive respect and protection.

Once again, human rights are applicable to each and everyone who is living in this world. For example, right to live, this is not only applicable to people of India, people of Pakistan, people of Sri Lanka and so on. It is extended to throughout the world. Right to live, right to equality, right to expression and thought, right to freedom, right to have faith, are the rights, which concern every human being. Human rights are based on mankind's increasingly demand for a decent and civilized life in which the inherent dignity of each human being will receive respect and protection.
CLASSIFICATION OF HUMAN RIGHTS

Human rights have been mainly classified under four headings, namely, civil rights, political rights, socio-economic rights and cultural rights. Civil rights include freedom of speech, press, assembly, and worship. These rights are enforced and protected through the procedural right of individual equality before law. Political rights are the privileges that provide the citizens a share in the exercise of the sovereign power of the state. Some of the political rights are rights to free elections, and also they permit the individuals to represent certain social or secular institutions.

Socio-economic rights include the right to a standard of living adequate for the health and well being of oneself and his family. They include, food, clothing, housing and medical care and necessary social services. They also provide the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond one’s control. In other words, socio-economic rights are rights to education, to a decent standard of living, to medical treatment, or to freedom from want and fear. Cultural rights include the freedom of thought, the freedom of communication, and the freedom of aesthetic expression and appreciation. Cultural rights include the rights, which gain strength against a threat of mass manipulation from a monopoly of the public media by certain powerful private interests.
EVOLUTION OF HUMAN RIGHTS

Rights and duties are complimentary to each other in a well-knit social fabric of any social organization. Rights, in any form of society, are primarily intended to accord social justice to the human individuals. According to Kant, a right has a power to create a sense of obligation or duty in an individual as a moral being. More than that, it is "the restriction of each individual's freedom so that it harmonises with the freedom of everyone else." If X has a duty to leave Y alone or to provide him with some service, then Y has a right to that permission or service. In other words, it becomes an obligation on the part of X towards Y. It amounts to saying that rights necessarily involve social relations. Apart from that, a duty as an obligation is binding on individuals. Therefore, individuals are not praised for doing their duties. For instance, we do not praise a debtor for paying his debts. It is his moral obligation to repay his debt. It must be borne in the mind that whatever is the right of a particular individual as a human being is also the right of another and becomes the duty of every individual to guarantee as well as to possess that right. In other words, every individual must have an obligation to guarantee to others the rights that he or she claims for himself or herself.
The idea of human rights is considered to be a modernized version of the doctrine of natural rights in Western thought, which was developed by Hobbes and Locke. Though one can argue to establish some close connection between the natural rights and the natural law doctrines, it was the natural law, and not the natural rights doctrine, which dominated Western thinking almost until the middle of seventeenth century. During its long history in the west, the natural law doctrine was conceived differently at different periods. In other words, different thinkers conceived the same concept, namely, natural law in different ways. The Greek, the Stoic and the Roman conceptions separated natural law from human law. Natural law, also known as 'natural justice', according to them, can be discovered by reason. Also it is general, immutable and invariant. Human law and human justice, on the other hand, are particular and conventional. Because natural law is based on reason, and because reason is universal among men, natural law is binding on all alike. Cicero, for example, says;

There is indeed a law, right reason, which is in accordance with nature; existing in all, unchangeable, eternal …. It is not one thing at Rome, and another thing at Athens... but it is a law, eternal and immutable for all nations and for all time.
Hobbes, in his *Leviathan*, depicts man as a corrupt and untrustworthy being by natural constitution. People are in tacit agreement with him, he claims, because they too consider man untrustworthy as is evidenced by locking the doors of their houses; even within the family circle, one is locking his private chest because of his mistrust of his family. Man, a corrupt and belligerent creature by nature, is entitled to the same laws enjoyed by brute animals; “every man has a right to every thing; even to another’s body.” Thus man is the combination of both human and animal.

Hobbes, against this background, speaks not only of the natural rights but also of natural law of man. The first law of man is the law of self-preservation. Man is forbidden to do anything destructive to his life since there is nothing in this world for which it is worth risking one’s life. It is imperative that a man preserves his life at all costs. “A law of nature (*Lex Naturalis*), is a precept or general rule, found out by reason, by which a man is forbidden to do that which is destructive of his life or take away the means of preserving the same; and to omit that by which he thinks it may be best preserved.” The law of self-preservation leads to or has as its concomitant a ‘rule of reason’, namely, “that every man ought to endeavour peace, as far as he has hope of attaining it: and when he cannot obtain it, that he may seek and use all helps and advantages of war.”
Though the natural law doctrines have a long historical tradition, the doctrine of natural rights emerges in Western thought only in the sixteenth and seventeenth centuries, especially in the writings of Hobbes and Locke. If the doctrine of human rights is a modernised version of the natural rights doctrine, then it is clear that the doctrine of human rights emerges rather late in the western history. Isaiah Berlin (attributing the view to Condorcet) says:

The notion of human rights was absent from the legal conceptions of the Romans and Greeks; this seems to hold equally of the Jewish, Chinese and all other ancient civilizations that have since come to lights. The domination of this ideal has been the exception rather than the rule, even in the recent history of the west.  

It was Hobbes who made the explicit distinction between natural right (jus naturale) and natural law (lex naturalis). For Hobbes, an individual possessed natural rights in a state of nature ‘to protect his life and members’ and ‘to possess, use and enjoy all that he would, or could get.’ Hobbes did not derive his natural right to self-preservation from any moral or legal rule, but from the psychological nature of man. Man, according to Hobbes, is self-seeking and power mongering. At the same time, he is afraid of death. This peculiar psychology of man drives him to accept that ‘he be contented with so much liberty against other men, as he would allow other men against himself.’
Hobbes’ theory of natural rights/s laid the road for the development of the concept of rights. But some thinkers are of the view that Hobbes theory is not to be as influential in western thought as John Locke’s. In fact, the idea of Natural right is Locke’s original contribution to political philosophy. It is he who developed it. Locke, like Hobbes, postulated that the people could possess natural rights even in the absence of social and political institutions. To quote Locke in this context:

The State of Nature has a law of Nature to govern it, which obliges everyone; and Reason, which is that Law, teaches all mankind, who will but consult it, that being all equal and independent; no one ought to harm another in his life, health, liberty or possessions.¹⁵

Second, it is the individual, according to Locke, who is the possessor of these rights, and he has thus set in motion, what C. B. Macpherson calls, “the political philosophy possessive individualism.”¹⁶ Third, these natural rights are “inalienable.”¹⁷ It means that the sovereign cannot take them away. In other words, we can say people cannot live without these rights. These rights, again, do not admit of exceptions. Prima facie, Lockean rights are not absolute. Finally, Lockean natural rights are “negative rights.”¹⁸ In that they do not enjoin others to positively do something.
From the above sketchy characterization of natural law and natural rights theories, it becomes clear that the natural law and natural rights doctrines are not equivalent and, in order to get especially a Lockean theory of natural, one ought to take a 'big leap' from one to the other. Take, for example, St. Thomas’s first precept: of natural law, namely, “that good is to be done and promoted, and evil is to be avoided (bonum est faciendum, malum vitandum).”

From this primary natural law, there follows an obligation (and not a right to do good and avoid evil). In fact, the right to tell, ‘say truth’, is a queer kind of rights. We ordinarily talk about the right to tell the truth, which means the obligation on someone’s part to tell the truth. The same implication holds with other natural laws that St. Thomas held. They are: self-preservation, propagation of species, pursuit of truth about God and social living. The theologised versions of natural law which made God the creator of natural laws are generally less enthusiastic to draw any ‘rights of man’ doctrines from natural laws because, strictly speaking, God alone can have rights; men have obligations to God and all His laws. Not only during the medieval ages, but also in ancient Rome, philosophers more concerned with obligations and rather than with rights. Cicero, for example, was very explicit about this in his characterization of natural law. After stating, “there is in fact a true law—namely, right reason—.” He continues:

By its commands, this law summons men to the performance of their duties; by its prohibitions it restrains them from wrong doing.... Neither the senate nor
the people can absolve us from our obligation to obey this law.\textsuperscript{20}

A second difference between the natural rights theory and the traditional law theory lies in the individualistic basis of natural rights. The 'political theory of possessive individualism' of Hobbes and Locke envisaged that the individuals could have rights in themselves outside the social order. The Greek, the Roman and the Medieval natural law theorists, on the other hand, thought that the socio-political order reflects the natural divine order and strictly speaking, that the society alone has rights. Individuals have only obligations. Even if there are any rights of individuals, they would maintain, they are conferred on them by the society and hence derivative. For natural law theorists, natural law binds people into a community and hence the community is the primary unit of concern; for natural rights theorists, on the other hand, natural rights constitutes the very being of individuals, and therefore the individual becomes the primary unit of study.

It should also be noted that Locke with his premise of the individual as the bearer of rights, derived the conclusion of a limited government, whereas other natural law theorists who are equally individualistic (like Hobbes, Molina, Grotius, etc) derived an authoritative form of government from the same premise.
The Lockean version of natural rights theory in the west, therefore, should not be considered as another version of the natural law theory. It should, instead be considered a ‘revolution’ in the natural law tradition. It was a revolution because the natural rights theorists no longer talk about the central themes of the natural law tradition like the university and immutability of physical order, or about the divine reason or about the revelation of God. Instead, they speak in a straightforward way about the ‘self-evident truths’ concerning man’s right to life, liberty, property, etc.

Jean Jacques Rousseau, the most influential French philosopher, is probably the first one to give wholly positive picture about man in his Social Contract Theory. He postulated that; “man is born free, and he is everywhere in chains.” He said that nature is corrupted because modern civilization has drifted from its pure and unadulterated natural state into a corrupt form of existence called ‘civilization.’ Though he proposes a positive approach to man he has posited nature as corrupt and belligerent in which the sting of man’s evil nature is explained in terms of civilization.

His main doctrines in his Social Contract are: Man’s inalienable right of freedom, Man’s inalienable right of equality, Sovereignty of the people, and so on. He proposes that modern societies should take as their prototype the only natural one, the ‘family.’ The chief characteristics of a family are freedom and equality rights, which accrue to man by birth. States are essentially
extended families. Therefore, they must be organized and administrated the way in which families are.

The *summum bonum*, which any State can possibly pursue is liberty and equality, 'liberty, because any individual dependence is so much force withdrawn from the body of the State', 'equality, because liberty cannot subsist without it. Certain definite implications, such as the preclusion of slavery, follow from the above premises. Since no man has any natural authority over his fellow – men, and since force is not the source of right, convention remains as the basis of all lawful authority among men. Slavery is abhorrent for it proposes that a man buy his life at the cost of his liberty: "it is therefore, an iniquitous bargain to make him purchase his life, over which the victor has no right, at the cost of his liberty."22

The modern conception of human rights, again, especially the Universal Declaration of Human Rights, 1948, is not another natural rights doctrine, with the mere change of name from 'natural rights' to 'human rights.' There are important differences between the natural rights and the human rights doctrines. Joel Feinberg says that:

All of the rights that have been characterized as 'natural rights' in the leading manifestos can also be called human rights, but . . . not all human
rights are also by definitions natural rights. The theory of natural rights asserts not only that there are certain human rights, but also that these rights have certain further epistemic properties and a certain metaphysical status. In respects the questions of moral ontology and moral epistemology, the theory of human rights is neutral.

Apart from their epistemic and ontological neutrality, we may also say that the modern conception of human rights is more comprehensive than the traditional theory of natural rights. For example, the (Lockean) natural rights theorists would be reluctant to include economic rights like the right to join trade unions or the right to holidays with pay as 'natural rights.' The modern human rights theorists on the other hand, would consider these as important human rights.

Another important difference between the traditional natural rights and the modern human rights is the scope of their application. Though the traditional rights declarations are couched in universals like 'all men are born with . . . ', they were not really intended to be universal in application. The French Declaration or the Virginia Declaration applied to particular situations but the Universal Declaration of Human Rights is Universal in application. Because all the nations of the world were participants in this Declaration, Last but not least, the traditional natural rights theorists sought to give ontological and epistemological justification for the existence
of human rights, but contemporary human rights theorists are satisfied with giving moral and political justification for the existence of human rights.

It is clear from the above that the modern conception of human rights is not just another version of the traditional western conceptions of natural law or natural rights doctrine, though there are some intimate connections between them. What, then, are human rights and what is their importance? There is no philosophical agreement as to what exactly human rights are. It is sometimes suggested that a right is a human right if it possesses the following characteristics: (1) All and only human being have them; (2) all humans share them equally; (3) human rights are not derived from any special status; and (4) human rights can be claimed against or from all human persons and institutions. Some philosophers take a cognitive / descriptive position concerning human rights and state that they are, in fact, ‘possessed’ by all human beings. But a cognitive theory of human rights is beast with several difficulties. To mention a few: It is maintained that from the propositions, say, that ‘X is human’ we cannot deduce that ‘X has human rights’; that though humans lived on this planet for long, the very talk of human rights is rather recent; that human rights are more often not violated than respected; and so on. Because of these difficulties, other philosophers hold a non-cognitive / prescriptive position and maintain that human rights are ‘complicated performances’ (Meldon), that they are ‘manifesto rights’ (Feinberg), that they are
'desired ideals' (Blackstone), and so on. In fact, the Universal Declaration of Human Rights itself seems to lend support to a prescriptive theory when it characterizes human rights as 'a common standard of achievement for all peoples and all nations', to be promoted by 'teaching and education'. If we agree with the prescriptivists that human rights are merely manifestos or ideals, then human rights ought to be called 'human ideals' and not 'human rights' for the notions of 'claim' and 'entitlement' are involved in the concept of 'right' and not in the concept of 'ideal'.

This apart, the inclusion of economic and welfare rights in the Universal Declaration poses many problems. For example, if we define 'right' in the strong sense as having 'a claim to some thing and against someone, the recognition of which is called for by legal rules or, in the case or moral rules, by the principles of an enlightened conscience'. then most of the economic and welfare rights (for example, the right to adequate nutrition or the right to holidays with pay, etc) contained in the Universal Declaration are inoperable in many nations in the world, and these human rights, therefore, will be empty claims. To avoid these problems, if we maintain that human rights, strictly speaking, be restricted to personal and civil rights (omitting economic and welfare rights), then our notion of human rights will remain 'negative' and not 'positive' and man would argue that economic rights have as good a claim to being human rights as civil and political rights.
Finally, it is also pointed out by critics that even ‘liberty rights’ like freedom of thought, speech, movement, etc. and ‘personal rights’ like the right not to be subjected to cruel and inhuman punishment are not absolute, since one can always imagine circumstances when they can be overridden. If human rights are not absolute, but *prima facie*, it seems as though human rights become indistinguishable from other rights, and thereby they lose their special character as human rights.

**INDIAN PERSPECTIVE OF HUMAN RIGHTS**

In the Indian philosophical tradition primarily we come across a number of references to obligations than rights in the form of *Sadharana-dharmas* and *varnasrama-dharmas*. In fact, the *Sadharana-dharmas* as obligations are not only performed towards human beings, but also towards all living creatures; although the latter do not have any obligations towards the former. However, as living creatures they enjoy certain rights, especially right to life. According to Manu, there are at least ten important duties to be performed by every human individual to attain the supreme goal of life. They are: contentment, forbearance, gentleness, and respect for other’s property, cleanliness, self-control, knowledge, philosophic wisdom, veracity, and patience.
When Julian Huxley, former Director-General of UNESCO, requested Mahatma Gandhi's view on human rights, Gandhi replied:

I learnt from my illiterate hut wise mother that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world. From this one fundamental statement, perhaps it is easy enough to define the duties of Man and Woman and correlate every right to some corresponding duty to be first performed. Every right can be shown to be a usurpation hardly worth fighting for.  

This clearly depicts the way in which the Indians are influenced by the tradition as regards the nature of rights. They always emphasized the need for fulfilling the obligation of the individuals as members of society. And it also shows that during the time when human rights emerged in the western countries, Indians were unaware of the notion of 'human rights'. In fact, the reply given by Gandhi to Huxley may come as a surprise to the modern western thinkers. But to the eastern mind, there is nothing startling about this position. Chung-Shu Lo, the Chinese thinkers, for example, pointed out that the basic ethical concept of Chinese social political relations is the fulfilment of the duty to one's neighbour, rather than the claiming of rights. The idea of mutual obligation is regard as the fundamental of the duty to one's neighbour, rather than the claming of rights. As a matter of fact, it is regarded as the fundamental teaching of
Confucianism. Why is it that the eastern thought takes obligations, and not rights, as the primary category of their ethical – social – political thought?

First of all, eastern thought does not have the equivalent for the English word ‘right’. In Sanskrit, for example, the nearest equivalent of the term ‘right’ is *yukta* or *ucita* (appropriate), or *nyayata* (just) or *dharma* (obligation), but none of these terms capture the essence of ‘right’. In Chinese language, likewise, ‘right’ is translated into two words, ‘*chus Li*’ which, means ‘power and interest’.

Secondly, eastern thought seems to realise that ‘rights talk’ is not significant unless there is first the acceptance of obligations to respect other rights. Some commitment of the form ‘(I) / We accept the obligations to respect rights’ is a precondition for the fulfilment of others’ rights. Where there is no acceptance of obligation, talking about rights will be merely making claims with no hope of realization. In fact, in the east the process of maturation of a human being into a person is conceived as a consisting not in the claming of rights, but others claim their tights. A child, for example, first develops a sense of obligations towards his parents, brothers and sisters, before he realizes or claims that he may have rights against them, or that he has obligations towards them because they have rights against him.
Thirdly, unlike the western individualism, a person is never conceived in the east as an isolated monad who enjoys his rights in isolation. In the east, the individual is one who is essentially related to other persons - in fact, to the whole universe - and the relationship between persons is conceived in terms of mutual obligations. In Confucian thought, for example, 'the basic social relations which entail mutual obligations are the relations between (1) rulers and subjects; (2) parents and children, (3) husband and wife, (4) older and younger brother and (5) friend and friend.' In Indian thought, likewise, the concept of man is the concept of a dharmic person or 'obligatory man'. To be a person is to incur certain rnas (debts) and to be in a dharmic (obligatory) relationship with other persons. Some of the dharmas or obligations of man are sadharana-dharmas (i.e. obligations pertaining to man-as-such towards himself and others), and visesa-dharmas (relative obligations pertaining to the individual depending on the circumstances or his station in life). Manu, the great Indian law-giver, for example, includes asteya (non-stealing of others property), satya (truthfulness) etc. as sadharana-dharmas, and the obligations pertaining to the four castes (varna-dharma) and the four 'orders of life' (asrama-dharma) as visesa-dharmas. The point to be noted here is that to be born as a person, according to the Indian thought, is to be born into a station in life, to be in essential relationship with others, and thereby to incur essential obligations to others.
The fourth, and most important, reason why eastern thought is obligation-oriented and never raised the rights—talk is the built—in safeguards in its socio-political structures against tyranny. In the west, philosophical theories have been advanced sometimes to justify an absolute sovereignty of the state against the citizen and sometimes a limited sovereignty. Some of the human rights theories could be considered to be a revolt against the absolute sovereignty of states. Those who justified absolute sovereignty in the west sometimes appealed to the ‘Divine Right of Kings’, (the emperor is the *lex animae in terris*, incarnation of law on earth); others appealed to the fact that the individual in the ‘Original Contract’ gave up all his rights to a person or a body of persons and therefore lost all his rights (Hobbes), and thus the sovereign became absolute; still others, like Rousseau, maintained the notion of absolute sovereignty but stated that the sovereignty lies in the ‘General will’. John Austin, and in recent times, Hans Kelsen, showed the conceptual impossibility of a political sovereign being limited. ‘Consent theorists’ like John Locke, on the other hand, maintained that political sovereign sovereignty is limited and not absolute.

Indian political thought, on the other hand, did not even develop the theory of absolute sovereignty, where the sovereign (whether an individual or a group) is above the law. The *samrat* or *cakravartin* (emperor) holding the *sveta - cchatra* or ‘White Umbrella’ no doubt symbolised sovereignty, but the sovereignty of the emperor is more symbolic than real. The limitations of the
Indian sovereign are not de facto: they are de jure limitations imposed by dharma. Dharma tells who is to govern (e.g. one must be a ksatriya, the laws of succession, the theory of election of king in the Vedic times); what the sovereign must do (he must protect the varna-dharma, promote social harmony, etc); when he is transgressing dharma. Dharma does not give right to the sovereign; it only imposes obligations on him. Raja - dharma is not a manifesto of the right of kings; it is a character of their obligations.

Raja-dharma or the obligations of the king include, among others, the following: the king must promote artha and kama, the material well - being and the happiness of the people. He must preserve and protect the dharma, especially the varna-dharmas (caste structures) which are the moral bases of the society and provide opportunities for the individual to pursue his goals within the framework of the varna-dharmai. The king does not merely uphold the dharma, he also promulgates a tradition (rajo va kala karranam). These limitations on the sovereign are not ‘legal’ limitations as ‘legal’ is understood as present. In tradition India, the concept of the ‘legal’ was not strictly separated from the concept of ‘morality’ and ‘religion’ because there were no codified rules and regulations. For example, Govt of India is strictly following constitution of India. Such a thing was absent in the traditional India. Therefore Manu said that the king who fails in discharging his duties, destroyed himself. On another occasion, Manu says, “A king who (duly) protects his subjects receives from each and all the one
sixth part of their demerit also (will fall on him).” In the *Mahabharata*, it is mentioned that it is the duty of the citizens to revolt against a tyrannical king who transgresses *dharma*.

Indian political thought, therefore, did not develop a theory of absolute sovereignty *de jure*. Nor were the king’s absolute sovereign *de facto*. No sovereign, for example, was ever able to turn a *sudra* into a *brahmana* or vice versa. As Daniel H. Ingalls observes:

> The great virtue of the religious legal traditions of India was that it caused the state to interfere as little as possible with the individual. In most of his affairs the individual was guided and judged by his neighbours, his caste brotherhood, his village council or headman. Only in his dealing with his outside world was he subject to the king's laws as interpreted by the king’s pundits. As John Mayene, the exponent of Anglo-Indian law puts it in the mouth of his village informant: 'We observe our own rules. Where there is no rule we ask the pundits.'

Though monarchy was the normal form of government, the Indian kings did not generally claim divinity. Unlike the Roman emperors for whom the temples or shrines were built, no temples were built for the Indian emperors. There are, no doubt, occasional references to the king as an incarnation of divinity (e.g. in *Manu* and
Mahabharata), but the so-called divinity of Indian kings was not understood on the European model. Again, to quote Ingalls here:

It is difficult to say how seriously the Indians took this matter of royal divinity and the point has been much argued. My own feeling is that they took it seriously enough but that gods were not so awesome a thing to them as they may seem to us. There were thousands of gods, who were not essentially different from men; more powerful, but all subject to lust and hatred and death. One must note an important distinction: the Indians claimed their king to be an incarnation of gods, not of God. The king was no Vishnu on earth.18

The upshot of the above discussion on human rights is as follows. If human rights are conceived as restraints on political authority, such restraints were always part of the eastern political tradition. We have seen that in Indian thought, nothing akin to the Austinean conception of absolute sovereignty was conceived. Also, if human rights are conceived as restraints in the operation of social mechanisms, then also it is true that no social group could exercise unlimited authority against another group or on individual’s in contravention of dharma. Likewise, if we include security and freedom from want as human rights, Indian thought emphasized that not only the king but also the family, the caste and the village has a dharma or obligation to provide for the need of the creature and comforts of the individual.
By making *dharma* the supreme principle of conduct, for both the rulers and the ruled, society and the individual, Indian thought, to a large extent, avoided any conflict between them. It is not the case that some have rights and others have obligations; rather, everyone has obligations.

By creating the world of obligations and neglecting the realm of rights, eastern thought had assumed a perfect world where everyone acknowledges and performs his or her obligations without failure. But, unfortunately, our 'real world' is imperfect, because people sometimes are tempted not to perform their obligations for there are always exceptions. In this world of obligations, when people sometimes do not perform their obligations, we cannot even make a claim that they ought to do so. In this context we can say that the sense of 'ought' necessarily presupposes a sense of 'right.' In the absence of 'right' such claims against the non-performance of one's 'obligations' are not taken very seriously. Because we can make such claims only when we possess rights. Suppose, some people fail to perform their obligations, we cannot, as a matter of right, insist that they ought to perform their obligations. Take, for example, the mutual obligations of a king to his subjects and vice versa. If a king fails to perform his obligations to the subject, the subjects may not perform their obligations to the king. But the subjects cannot demand the king to discharge his obligations because they are entitled to such provisions like 'demanding', 'claiming', 'being entitled', etc., which actually flow from the concept of right
and not from the concept of obligation. This is an apparent weakness in the Indian tradition in general.

Moreover, my obligations sometimes consist of nothing more than ‘feeling bound’, and these ‘binding feelings’ do not issue forth in the actual performance of the obligations unless others make their claims in the form of rights upon me. In other words, the right – claims act as the impetus for the discharge of my obligations towards others, which otherwise would remain in the realm of feelings. Moreover, a world of obligations is a world where everyone is bound, and therefore is inconsistent with freedom which is an important human value. A world of rights, on the other hand, gives the individual some freedom – at least the freedom to exercise or not to exercise one’s rights. As Joel Feinberg points out:

Having rights enable us to ‘stand up like men,’ to look others in the eye, and to feel in some fundamental way the equal of anyone. To think of oneself as the holders of rights is not to be unduly but properly proud, to have that minimal self-respect that is necessary to be worthy of the love and esteem of others. Indeed, respect for persons... may simply be respect for their rights, so that there cannot be the one without the other; and what is called ‘human dignity’ may simply be the recognizable capacity to assert claims.29
Suppose, we are living in a 'perfect world' – what the Indians conceive as the *Rama* - *rajya* (the kingdom of Rama), where everyone performs his or her obligations (*dharma*) without fail, what would be the world like? In fact, the Indian epic, *Ramayana* itself portrays its characters in the following way. Rama, the prince; Sita, the princess; and Bharata, the younger brother of Rama, never failed in the performance of their respective *dharmas* or obligations. Therefore, none of them used the 'rights language'. What these epic characters lack is variety, diversity and personality. On the contrary, in the other great Indian epic, the *Mahabharata*, the characters are so diverse and interesting personalities, because some of them assert their rights and demand the performance of obligations on the part of others. Of course, one needs to look at these two great epics from two different points of view. They may not depict the same moral value. However, the epic Mahabharata influenced many for it maintains proper balance between obligations and rights.

Just because the world of obligations does not entertain individual freedom, it does not mean that the world of obligation is less perfect than the world of rights wherein there is enough scope for freedom of will. In fact, the world of obligations is logically prior to the world of rights. To say that X has a right to 'A' means not only that X is entitled to do A; that X can make claims against others, if he so chooses; but also others are required to do according to X's claim, or have a duty of non-interference in X's pursuit of A. The obligations of others do not arise as a consequence of X's
claims, but prior to his claims. Apart from this logical priority of duties over rights, the world of rights is empty unless people are willing to accept their responsibilities and commit themselves to discharge their obligations.

Let us ignore for the moment the logical priority of obligations and maintain for the sake of argument that obligations are the logical consequence of rights. Even here, people would be less willing to perform their obligations unless the right—holder makes the claim that others perform their obligations. For example, a debtor has an obligation to the creditor to return something he borrowed. If this obligation is founded only on the right of the creditor, then the debtor may not sometimes discharge his obligations unless the creditor demands that the debt be repaid. The reason for this hesitation in discharging one's obligation is obvious. Since the obligation of the debtor arises as a consequence of the right of the creditor, and since the creditor has the freedom not to exercise his right, the debtor may 'wait and see' whether the creditor will 'make the first move' and demand that the debt be repaid. Historically, human rights in many parts of the world have not been 'violated', but conveniently 'ignored', because no right—claims have been made demanding the fulfilment of obligations by others.

This also leads us to the point that the world of obligations is wider than the world of rights. It is now widely recognized that rights and obligations are not correlatives, that though every right
implies a corresponding duty, not every duty or obligation implies a corresponding right. We thus have obligations to be kind, charitable, benevolent, and so on, though there are no corresponding rights to receive kindness or charity. Some philosophers also maintain that we have obligations to subhuman beings, to nature and to environment, though they do not have corresponding rights on us.

Finally, in the world of rights, it is the rights and not the rules from which the rights arise that are considered important. The rules, by themselves, do not have any intrinsic value. Since every individual is the possessor of rights, he thinks of himself as the beneficiary of others discharging their obligations towards him. What do others owe me? Should I or should not I compel others to perform their obligations? These are the foremost concerns in the world of rights. When the individual asks these questions, he makes himself the centre of attraction by making the demands on others. He may not care whether others have the ability or capacity to discharge their obligations towards him. Some of the problems with the economic and welfare rights contained in the Universal Declaration of Human Rights arise because they do not take into consideration the abilities or capacities of other individuals / nations into account.

The recognition of human obligations along with human rights not only extends our conception of human dignity but also solves some problems which the Universal Declaration of Human Rights has posed. If (as J. Feinberg maintains) human rights “enable
us to ‘stand up like men’... and to feel in some fundamental way the
equal of anyone,’ human obligations enable us to care, to show
concern to other human and sub-human creatures and to bow one’s
head at the majesty of the ‘Moral Law’ and the moral agency which
each individual embodies in himself. Likewise, if human rights
make us think of ourselves properly proud, to have that minimal
self – respect that is necessary to be worthy of the love and esteem
of others, human obligations enable us to think of ourselves as
persons having humility, self-discipline and compassion. To
Feinberg’s assertion that “what is called ‘human dignity’ may simply
be the recognizable capacity to assert claims,” we may add that
human dignity is not exhausted by the assertion of claims, but should
also consists in leading virtuous life by discharging one’s duties and
obligations sincerely and cheerfully. Other advantages for going
beyond the current human rights doctrines to include human
obligations are the following:

First of all, the ‘Universal Declaration of Human Rights and
Obligations’, as we may call this, will give us a comprehensive and
synthetic view of our conception of human dignity, assimilating the
insights of East and the West, tradition and modernity. The divisions
of mankind living either in a world of rights or in a world of
obligations will thereby be broken and the best from both worlds can
be integrated.
Secondly, because the world of obligations is wider than the world of rights, many important features of human dignity and human intercourse which were not included in the current human rights discussion could be easily accommodated. For example, the current human rights doctrines do not include such important moral values like 'truth telling', 'promise keeping', 'alleviating suffering', and so on. The main reason for not including these values seems to be that they do not neatly fit into the 'rights doctrines', (e.g. the right to keep one's promises sounds odd). On the other hand, it is clear how impoverished human beings would be without these values. Many of these important values could now be accommodated under the rubric of 'human obligations'.

Thirdly, the current controversy whether economic and welfare rights can be properly called 'human rights' may also be solved. Since many of the economic rights cannot, under the present economic circumstances prevailing in the most developing nations and underdeveloped nations, be implemented anyway, we do not gain anything by calling them 'human rights'. On the other hand, by making them 'human obligations', the individuals and groups do not make empty claims on each other. They could rather think of these as mutuality of obligations where one has the obligation to promote economic prosperity.

Finally, the very comprehensiveness of the 'Universal Declaration of Human Rights and Human Obligations' theory would
allow for greater diversity among peoples and nations, so that we do not judge whether a society or a nation is 'pro-human rights' by only taking into consideration a country's implementation of, say, the 'liberty rights' or 'personal rights'. Even in contemporary India, for example, the family, the caste and the village look after the welfare and security of the sick, the old, the handicapped and the unemployed as a latter systems where the current human rights doctrine on welfare rights are legislated.
Notes and References

1. According to the rationalists all the ideas are innate because when the moment human beings enter into the world, they are coming with ideas. In other words, we have some ideas from our birth. Similarly, we have these rights from our birth. Innate rights, Kant meant, 'one that belongs to everyone by nature, independently of any juridical act.


4. Some English writers call them 'entrenched rights' because they are guaranteed by a written constitution, so that they cannot be taken away or abridged without amending the constitution itself or constitutional rights because they are enforceable by the remedies specified by the constitution, apart from the remedies prescribed by ordinary law.

5. They are natural in so far as they are members of the human family, and artificial in so far as they belong to a particular state or nations.

12. Ibid.,
13. Ibid.,
17. These rights are inseparable from human beings. According to Locke, the natural rights are not granted by anybody else. Rather, people have the rights from their birth hood. So, we can't simply take away these rights.
18. Positive rights are that which enables individuals to do something, whereas negative rights are that which restricts
an individual to perform certain activities which are dangerous to the society.


27. Ibid., p.17.

28. Ibid., p.18.

29. Ibid., p.21.


31. Ibid., p.25.