CHAPTER FOUR

AN OVERVIEW OF THE HISTORICAL EVOLUTION

OF HUMAN RIGHTS IN THE COLONIAL INDIA

4.1 Introductory

The modern concept of human rights jurisprudence had taken birth during India’s struggle for freedom from the British Rule. The colonial period is, therefore, generally considered to be a period of total denial of human rights. It was during this period that the Indians underwent large scale discrimination, torture, internment, deportation and the total denial of basic freedoms etc. The fight against the British imperialism and domination took the shape of demands in the form of civil rights/liberties and constitutional guarantees which reflected in effect the basic spirit of human rights.¹

The main focus of this chapter is to trace the roots of human rights movement in the colonial period. As it is well said, the modern version of human rights jurisprudence took a firm root during the British Rule in India. While the human rights struggles were mainly against the exploitative and the oppressive rule by the colonial power, the movement was meant to restore the lost Dharma of the glorious past through internal reforms of the Indian society. Along with that, it also focuses on the role of the social reformers in protecting and promoting the basic rights of the people, various landmarks which helped in nurturing the movement for human rights and the growth of Civil Liberties Movement which often coalesced with the general national current for its Anti-British content, though it never replaced the movement for national liberation. The Indian National Movement was in fact a grand project to build a modern India along democratic and civil libertarian lines. This

chapter also explains that the human rights enjoyed by the people of India, in however limited a measure, is a legacy of our national movement.

### 4.2 Role of the Social Reformers in Promoting Human Rights Culture in India

The nineteenth century India is characterized by immense intellectual and cultural stirrings. The impact of the modern western culture and consciousness of defeat by a foreign power gave birth to a new awakening. There was awareness that a vast country like India had been colonized by a handful of foreigners because of internal weaknesses of the Indian social structure and culture. The cultural and intellectual regeneration witnessed during the period of colonial domination, which, following the European example is generally described as Renaissance, was an early expression of the onset of modernity and enlightenment in India. However, it is widely recognized that it was fundamentally different from that of the European experience.²

The most positive contribution of the Renaissance was that it promoted the secularization of the Indian mind. Amongst the several ideas that impinged upon this process, of particular significance were: religious universalism, humanism, and rationalism. Collectively they created the necessary ideological groundwork for the emergence of secularism by trying to erase the distinctions between religions, by seeking to sever the umbilical cord with the otherworld, and by offering a rational critique of religious practices.³ Thoughtful Indians began to look for the strengths and weaknesses of their society and for ways and means of removing those weaknesses. Nearly all the nineteenth century intellectuals who were impressed with the doctrines of reason and humanism of the west, shared the conviction that the social and religious reforms were urgently needed to resurge the Indian society of all the evils.⁴

The most seminal contribution in this regard came from the one of the great renaissance thinkers, Raja Ram Mohan Roy. This great visionary made a poignant critique of the religious rituals that created major divisions in the Hindu society and denied majority of

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³ ibid., p. 141.
population their basic human rights. He criticized all forms of discrimination particularly with regard to women. He made fervent plea to abolish the inhuman practice of *Sati*,\(^5\) child marriage and violence against women. His opposition to polygamy and his advocacy for equal rights of women to property also came from his firm belief in the supremacy of reason and rationalism.\(^6\) Further, while recognizing the British Empire as the ‘modernizing agent’ in India, Ram Mohan Roy fought against the British restriction on freedom of press in 1823. As a matter of fact, his concern for civil liberties made him to submit petition with both the houses of the British Parliament, signed by hindus and muslims, against the *Jury Act* of 1827, which introduced religious bias into the judicial system of India. He was particularly opposed to that provision of the Act under which, “natives, either Hindus or Muslims, are subject to judicial trial by Christians, either the European or native, while Christians are exempted from being tried either by a Hindu or Muslim juror.” In short, for his seminal contribution, both in thoughts and actions to improve the civil liberties of the native, Ram Mohan Roy is often cited as the founding father of the human rights movement in the modern India.\(^7\)

The unfinished work of Ram Mohan Roy was carried on by another great social reformer of the nineteenth century Bengal, namely, Ishwar Chandra Vidyasagar (1820-1891). A scholar of great depth, he drew the attention of his contemporaries to societal violence against women. He stood against all odds and obstructions including the hostile social resistance, and dedicated himself to the cause of women’s emancipation. It was due to his unstinted efforts that legal obstacles to the marriage of widows were removed through legislation in 1856.\(^8\)

\(^5\) The practice prevalent amongst some upper caste families, of a wife immolating herself on her husband’s funeral pyre.


\(^8\) In 1856, the *Widow Remarriage Act* was passed with the efforts of Ishwar Chandra Vidyasagar, legalizing the marriage of widows and declaring the issues of such marriages as legitimate. For more details: See N. Jayapalan (2001): *History of India (From National Movement to Present Day)*, New Delhi: Atlantic Publishers, p. 127. and Lucy Caroll (2008).
an ardent activist for women’ rights, he also played a leading role in promoting education of girls. He started and helped in setting up of a number of schools for girls. This was indeed a great progressive venture in those days of conservatism.⁹

From Bengal, the movements for modernization of the Indian society were spread in other parts of the country. In Maharashtra, Mahadev Govinda Ranade (1842-1901) who was one of the founders of the Indian National Congress set up an All India Organization, the Indian Social Conference in 1887. Under his dynamic leadership, the Conference worked and campaigned all over the country for various human rights abuses such as abolition of caste, raising the age of marriage, discouragement of polygamy, and encouragement of widow remarriages, inter-caste marriages, and women’s education, improvement in the condition of the so called outcastes, and settlement of religious disputes between Hindus and Muslims by the appointment of Panchayats.¹⁰

Ranade was a great thinker and a great visionary. That is why, even at that time, he was able to realize the inter-dependence and indivisibility of what is now known as the two generations of human rights - civil and political rights, and economic, social and cultural rights. He said very poignantly:

You cannot have a good social system when you find yourself low in the scale of political rights, nor can you be fit to exercise your political rights and privileges unless your social system is based on reason and justice. You cannot have a good economic system when your social arrangements are imperfect. If your religious ideas are low and groveling, you cannot succeed in social, economical and political spheres. This interdependence is not an accident but is the law of nature. Like the organs of our body, you cannot have strength in the hands and the feet if your internal organs are in disorder. What is applied to human body holds good of the collective humanity we call society or state. It is a mistaken view which divorces considerations political from social and economical, and no man can be said to realize his duty in one aspect who neglects his duties in other directions.¹¹

⁹ ibid., p. 128.
It was really amazing that what an Indian intellectual-activist thought a century ago, has now become a popular assertion of the world human rights community for effective enforcement of Universal Declaration of Human Rights on an international basis.

Mahatma Jotiba Phule was another great social reformer of Maharashtra who founded the Satyashodhak Samaj to mobilize the oppressed castes in a movement for equality, and played a significant role in promoting education of girls, particularly of the oppressed castes. Likewise, Kandukuri Veerasalingam (1848-1919) led the movement for widow remarriage and girls’ education in Andhra, while Shri Narayana Guru (1845-1928) organized the movement against caste oppression in Kerela.

Similarly, B.R. Ambedkar raised his people who were regarded as untouchables from dust to dignity. “Manuski” which means human dignity, is one of Ambedkar’s key words. “Positively”, he said, “my social philosophy is enshrined in three words: liberty, equality and fraternity.” He said that Equality implied:

(i) the right to equal opportunities to all;
(ii) freedom from want and fear; and
(iii) freedom from oppression and dictatorship whether by individuals, social groups or nations.

Ambedkar felt that political freedom loses its meaning if it re-established caste oppression. His scale of values was determined by the usefulness of action towards establishment of equality in social order. Ambedkar is thus perhaps the first and the frontal figure and the most shining symbol of the Indian Dalits’ great recovery. According to Mahendra Singh, Ambedkar “is a Bharat Ratna in every sense of the term and deserves to be so venerated.”

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The socio-religious movements led by the *Arya Samaj*\(^{15}\) founded by Swami Dayanand Saraswati in 1875 and the *Ramakrishna Mission*\(^{16}\) founded by Swami Vivekananda in 1899 also made remarkable contributions in spreading education amongst all sections including women, awakening of Hindus against social evils associated with superstitions and religious practices, and developing the spirit of nationalism.

Similarly, the Muslim reform movements such as the Aligarh Movement led by Sir Syed Ahmed Khan (1817-1899) and the *Ahmediya* Movement founded by Mirza Ghulam Ahmed in 1899 made significant contribution in emphasizing the universalism and humanitarianism of Islam and creating national awakening amongst the Muslims.\(^{17}\)

Keeping in view the above mentioned developments, we can make out that during the course of social reforms; various human rights came to be looked at as individual rights, rights of the community and those of the nation. All the three were expressed throughout the nineteenth century. For example, as mentioned above, the campaigns for the removal of sati and the advocacy of widow remarriage were projected as important individual rights. Leaders like Raja Ram Mohan Roy, Ishwar Chandra Vidya Sagar and other championed these issues as a part of an individual’s basic rights. Similarly, the low caste leaders like Jyotiba Phule fought for the rights of the community as a whole. The leaders like Bankim Chandra and Vivekanand took the initiative in projecting rights of the nation. All these concerns gave a new direction to the rise and growth of human rights movement in the pre-independence India. Similarly, the renaissance and the enlightenment also enabled the intelligentsia at that

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time to draw upon the western liberal ideas and to critique the indigenous social, cultural and intellectual practices on the basis of rational and humanistic criteria.

However, the sources that shaped their concerns were not exclusively western. The traditional influences had an equally important presence. Their engagement with tradition was not revivalist, but creative and critical which led to a hybridity of sorts, combining often traditional sanction for argument and legitimacy with notions of social justice and political advantage.\footnote{K.N. Pannikar (2007), pp. 11-12.}

In 1867, Vishnubawa Brahmachari wrote a treatise on beneficent government and formulated the outline of an egalitarian social and political order and its practical functioning on the lines of primitive communism, deriving his ideas exclusively from traditional sources.\footnote{An Essay in Marathi on Beneficent Government by Vishnubawa Brahmachari, translated at the desire of the author by Captain A. Phelps (Bombay: Oriental Press, 1869)} Keshab Chandra Sen who had visited England and had come in contact with the socialist ideas, exhorted the proletariat, in one of his orations, to rise up for their rights.\footnote{K.N. Pannikar (2007), p. 14.}

Thus on the basis of the above discussion, we can say that the social-reform movements in the nineteenth century India prepared a background for the subsequent developments that helped in shaping and strengthening national and human rights movement in the pre and the post-independent India respectively.

\subsection*{4.3 The National Movement and the Recognition of Rights}

The Indian national movement was undoubtedly one of the biggest mass movements the modern society has perhaps ever seen. It was a movement which galvanized millions of people of all classes and ideologies into political action and brought to its knees a mighty colonial empire. At the beginning of the nineteenth century, just before the start of the national movement, when these ideas were applied to the Indian society in the form of social reforms, they acquired a uniquely Indian character. When the British ruled India, resistance to the foreign rule was manifested in the form of demand for fundamental freedom and civil and political rights for people. The avowed objective of several national organizations including that of the Indian National Congress in the beginning was only to secure some civil liberties
and human rights of non-discrimination on grounds of race, colour etc. in the matter of access to public places, offices and services.\textsuperscript{21} The East India Company also debarred Indians from high offices and economic and political rights. The legislative, executive and judiciary were oriented to protect and promote the interests of the British. It was because of the stiff struggle from the Indian people that the \textit{Charter Act} of 1813 was enacted with a view to promote the interest and happiness of the native inhabitants in India.

Similarly, the \textit{Charter Act}, 1833 was passed to allow Indians to enjoy some political rights. It was the first Act by which no discrimination was shown to any person by reason of his religion, caste and place of birth, descent, and colour.

Next to the \textit{Charter Act}, 1833, the proclamation of the Queen Victoria on 1 November 1858 contained some principles of state policy that were similar to fundamental rights in nature. It provided the admittance to public offices and assignment of duties to which any subject by his education, ability and integrity was qualified to discharge.\textsuperscript{22}

The leaders of the national movement adopted variety of ways by which the issues of people’s human rights were introduced into the Anti-Imperialist struggle. These, \textit{inter alia}, included the following:

(I) Giving these issues top priority on its agenda;

(II) Constantly making demands from the Government especially at the initial stage of the movement;

(III) Educating the people regarding their rights and conducting struggles around these issues; and

(IV) Demonstrating through practice, whenever they could, their utmost concern for civil liberties and human rights.


The Indian National Movement was fully committed to a polity based on representative democracy and the full range of civil liberties for the individual. As a matter of fact, it provided the experience through which these two could become an integral part of the Indian political thinking. Starting from the turn of the twentieth century, the nationalists demanded the introduction of adult franchise. Much attention was paid to the defense of the freedom of the press and speech against attack by the colonial authorities besides the promotion of other political and economic policies.

4.3.1 Role of the Indian National Congress and Promotion of the Idea of Rights

From its foundation in 1885, the Indian National Congress (INC), the main political organ of the national movement, was organized on democratic lines. The first explicit demand of the people of the Indian sub-continent for fundamental rights found place in the Constitution of India Bill, 1895 formulated by the Indian National Congress, also called the ‘Home Rule Document’ which was hinted at a Constitution guaranteeing the basic human rights to all citizens. The ‘Home Rule Document’ contained the following rights:

(I) Right to bear arms;
(II) Freedom of speech, thought and expression;
(III) Inviolability of House;
(IV) Right not be punished except by a competent authority and only for a distinct breech of law;
(V) The right to equality;
(VI) The right to property; and
(VII) The right to vote.

Although the demands contained in the above mentioned document were not fulfilled by the British Government, they indicate the beginning of the courageous stand taken by the Indian National Congress on behalf of the people of the Indian sub-continent.

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24 ibid., p. 22.
Right from the beginning, the politically conscious Indians had been powerfully attracted not only to democracy but also to modern civil rights, namely, the freedom of speech, the press, thought and association. They put up a strong defence of these civil rights whenever the government tried to curtail them. It was during this period and as a result of nationalist political work that democratic ideas began to take roots amongst the Indian people in general and intelligentsia in particular. As a matter of fact, the struggle for democratic freedom became an integral part of the nationalist struggle for freedom.

In 1897, the Bombay government arrested Bal Gangadhar Tilak and several other leaders and tried them for spreading disaffection against the government. They were sentenced to long terms of imprisonment. At the same time the two Poona leaders, the Natu brothers, Balwant Natu and Hari Natu were deported without trial. The entire country protested against this attack on the liberties of the people.  

In 1915, an attempt was made to relax the control of the Government of India over the provinces. Such a step was considered necessary to give meaning and substance to the policy of introducing responsible government in the provinces. On the basis of the Montford Scheme, the Government of India Bill was drafted which became an Act in 1915. It was amended in 1916 and 1919. The preamble to the Government of India Act, 1915 reads, *inter alia* for “the gradual development of the self-governing institutions for the provinces of India, it is expedient to give to those Provinces in Provincial matters, the largest measure of independence of the Government of India.”

Apart from making demands on the British government to enlarge the space available for an exercise of human rights, the Indian National Movement, from 1920 onwards, actually conducted popular struggles around this issue. It is important to remember that the first All India mass movement against the British was organized on the question of a violation, by the British, on a crucial aspect of human rights. In 1919, the British government brought forth the notorious Rowlatt Bill (known after its author Sir Sidney A.T. Rowlatt) which would

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28 The Rowlatt Act, also known as *Anarchical and Revolutionary Crimes Act*, 1919, was sought to curtail the liberty of the people. It provided for speedy trial of offences by a Special Court, consisting of three
authorize the government to imprison any person without trial and any other legal procedure. This move by the British government was received with unprecedented and fierce opposition by the Indian leaders of all shades of opinions.²⁹ All the Indian members of the Legislative Council from - Srinivasa Shastri to Mohammed Ali Jinnah - opposed the Bill (yet it was passed). The national press was indignant calling it “monstrous” (New India from Madras), “a gigantic blunder” (Amrita Bazar Patrika from Calcutta), “repression in exelsus” (Bombay Chronicle from Bombay) and a matter of “shame, indignation and disgust” (The Hindu from Madras). An All India Hartal was organized and the entire country rose in protest against what was considered to be a blatant violation of human rights. Throughout its life, the Indian National Movement upheld human rights as an uncompromisable issue.³⁰

By the end of the second decade of the twentieth century, the national movement started espousing the doctrine of self-determination, i.e., the right of the Indians to frame their own constitution. In 1918, the congress session at Delhi, encouraged by the pronouncements of President Wilson and Mr. Lloyd George, formally demanded the application of self-determination to India, treating India as one of the progressive nations of the world. Britain was, however, not impressed by the argument of the congress. Hence, while announcing a new installment of reforms in 1919, she asserted that the timings and the place of

constitutional reform would be decided by the British alone. The Indian answer to this was the non-cooperation movement.\footnote{Krishna Deo Singh (1987), p. 17. Also See: Ravindra Kumar (ed.)(1995): Selected Works of Vithal Bhai J. Patel, Delhi: Mittal Publications, p. 368.}

The idea of individual rights also came up for the first time when a resolution on civil rights was adopted during the Thirty Fourth Session of the Indian National Congress held at Amritsar in 1919. The demand for equality is linked up with the history of freedom movement in India. Indians wanted the same rights and privileges which their British masters were enjoying in India. The idea of a Constituent Assembly for India has been in gestation for a long time both in the nationalist quarters and in the British ruling circles.

As early as 1922 Mahatma Gandhi had published an article “Independence” in the Young India (5 January 1922) broaching the idea of a constitution by Indians themselves.\footnote{M.P. Singh and Rekha Saxena (2008): Indian Politics: Contemporary Issues and Concerns, New Delhi: Prentice Hall of India Pvt. Ltd., p. 14.} Moreover, the inclusion of fundamental rights in the Irish Constitution in 1921, influenced the Indian National Congress to draft a ‘Commonwealth of India Bill’\footnote{Annie Besant, et.al. played a leading role in drafting this bill. The Bill had its first reading in the House of Commons in December, 1925. It is significant that the bill, which had the support of very wide section of Indian opinion, specified in clear terms that India should be placed on equal footing with the self-governing dominions.} embodying a declaration of rights, of whose incorporation was demanded in the Madras Session of the Indian National Congress in 1927. *The Commonwealth of India Bill, 1925*, in clause 8, *inter alia*, demanded equality before the law and provided especially that there was to be “no disqualification or disability on the ground of sex,” along with the provision that all persons were to have equal rights to the use of “roads, courts of justice and all other places of business or resort dedicated to the public.”\footnote{P.M. Bakshi (2011): The Constitution of India, New Delhi: Universal Law Publishers, p. 24.}

Later on, in the Thirty Fifth Session of the Congress held at Nagpur, this approach was reaffirmed and a Draft Constitution incorporating a Declaration of Rights for the dominion of the British India was incorporated. These rights developed the idea of civil rights further. According to this resolution, the Indian National Congress was committed to the deed that
“no torture or corporal punishment of any kind and no degrading punishment shall be legal.” Individuals accused of a criminal offence shall be “(disclosed) the nature of the accusation and all evidence shall be taken before him in an open court subject to cross-examination.” In criminal trials, confessions were excluded from evidence “unless made in the course of the trial freely and voluntarily in the immediate presence of the trying judge”.

Furthermore, as mentioned above, the Draft Constitution envisioned the Right to Free Speech and the Right to Assemble. Education was regarded as one of the “most prominent junction of the Government”. A committee under Motilal Nehru was appointed. Reporting in 1928, this Committee declared that the first concern of the people of India was to secure fundamental rights. It is interesting to note that the Constitution of the Republic of India enacted in 1950, incorporated ten of the nineteen rights enumerated in the Motilal Nehru Committee Report, 1928. The rights emphasized by the Motilal Nehru Committee Report were:

(I) Personal liberty, inviolability of dwelling place and property;
(II) Freedom of conscience and of profession and practice of religion subject to public order and morality;
(III) Right of free expression of opinion and to assemble peaceably and without arms and to form association and unions subject to public order and morality;
(IV) Right to free elementary education maintained and aided by the state without distinction of caste and creed;
(V) Equality for all citizens before the law and in civil rights;
(VI) Right to (of) every citizen to the writ of habeas corpus;
(VII) Protection of Respect of punishment under ex-post facto law;
(VIII) Non-discrimination against any person on grounds of religion, caste or creed in the matter of public employment;

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(IX) Equality of right to all citizens in the matters of access to, and use of public roads, well and other places of public resort;

(X) Freedom of combination and association for the maintenance and implementation of labour and economic conditions;

(XI) Right to keep and bear arms in accordance with regulations; and

(XII) Equality of right to men and women as citizens.

The Simon Commission, also known as the Indian Statutory Commission, was appointed by the British Government in 1927, however, totally rejected the demand voiced by the Motilal Nehru Committee Report. Sir John Simon, the chairman of the Commission, in his report observed:

"We are aware that such provisions have been inserted in many Constitutions, notably in those of European States formed after the war. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there exist the will and the means to make them effective."

The major leaders of the national movement were committed whole heartedly to the civil liberties. For example, Lok Manya Tilak proclaimed that "liberty of the press and liberty of speech gave birth to a nation and nourishes it". Gandhi wrote in 1922 - We must first make good the right of free speech and free association . . . We must defend these elementary rights with our lives. The defense of civil liberties was also not narrowly conceived in terms of a single group or viewpoint; political trends or groups otherwise critical of each other vigorously defended each other’s civil rights. The moderates defended the extremist’s right to speak and write what they liked. For example, in 1928, the Public Safety Bill and the Trades Dispute Bill aimed at suppressing trade unions were opposed unanimously in the Central

37 V.P. Menon (1977), p. 35.
39 As the communist influence was spreading amongst the workers, the Government introduced a Public Safety Bill in September 1928 which provided punishments to those who were maintaining relations with the foreign countries. For more details, see: S.N. Sen (2010), p. 275.
40 The Trade Disputes Act of 1929 prevented lightning strikes by prescribing a month’s notice in public utility services. For more details see: Vinay Bahl “Attitude of the Indian National Congress Towards the Working Class Struggle in India (1918-47).” In: Sekhar Bandyopadhyay (ed.) (2009), Nationalist
Legislative Assembly\textsuperscript{41} and it was this strong civil libertarian and democratic tradition of the national movement which was, later on, reflected in the Constitution of Independent India. Both the Bills were passed to curtail the civil liberties of the people of India.

Later on, the Congress pledge of commitment to complete independence at the Lahore Session of the Congress under the presidency of Jawaharlal Nehru in 1930 declared the “inalienable right of the Indian people as of any other people, to have freedom and to enjoy the fruits of their toil and have the necessities of life, so that they may have full opportunities of growth.” It laid equal stress on political freedom and its end-purpose \textit{viz.}, a fuller life for the common man. It had by now become crystal clear to the leaders of the Indian national movement that achievement of national independence was an essential pre-condition for enjoyment of any of the other basic human rights and liberties.\textsuperscript{42}

Later on in the March 1931, the Karachi Session of the Congress adopted a resolution on “Fundamental Rights and Economic Programme”.\textsuperscript{43} The Indian National Congress linked political rights to economic and social rights in this context and the Indian political mind was characterized by those demands such as free association, freedom of conscience, protection of minorities, equality before law irrespective of religion, caste, creed or sex, neutrality in regard to all religions, universal adult franchise, free and compulsory education, abolition of capital punishment and free movement.\textsuperscript{44}

The Resolution also enjoined the state to control key industries and own mineral resources. It declared that “in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions” - an evidence of the awareness on the part of the leaders of India’s freedom struggle that political freedom by itself was of little value unless it lead to socio-economic revolution, to “the eradication of poverty and disparity, and the breaking down of the outmoded apparatus of superstition, privileges and hierarchy.”

\textsuperscript{41} \textit{ibid.}, p. 23.
\textsuperscript{44} Bipan Chandra (1988), p. 284.
Civil and political rights of the individual, therefore, were neither appreciated nor demanded in isolation but always in conjunction with positive social and economic rights of the masses.\(^{45}\)

The Indians saw these demands as positive realization of “self-rule” or we can say the realization of Fundamental Rights was made dependent upon the success of the movement achieving independence from the British Colonial power.

The Joint Select Committee of the British Parliament in the “Government of India Bill of 1934,” did not view with favour the demand for a constitutional guarantee of Fundamental Rights to the British subjects in India. The Government of India Act, 1935 was passed without any Bill of Rights much to the disappointment of the Indian leaders. However, this did not dampen the enthusiasm of Indians to have a list of fundamental rights incorporated in their Constitution. During the years when independence had been more of a hope than a reality, the Congress had been loud in demanding written rights.\(^{46}\) Jawaharlal Nehru in 1936 wrote, “if civil liberties are suppressed, a nation loses all vitality and becomes Impotent for anything substantial.”\(^{47}\) Thus we have seen that during their brief spell in power from 1937-39, the Congress ministries greatly extended the scope of civil liberties.

The decade for the 1940s was marked by the resurgence of interests in human rights. The denial of liberties under the German and the Russian totalitarianism and elsewhere had resulted in the adoption of the Atlantic Charter, the United Nations Charter, and the activities of the United Nations Human Rights Commission. The Indian political leaders were sensitive to these currents, which supported their own faith in the validity of written rights for the Indian people.\(^{48}\)

Subsequently, the Sapru Committee in 1945 stressed for a written Code of Fundamental Rights in the Constituent Assembly and raised a forceful demand for the inclusion of human rights in the Constitution.\(^{49}\) The idea of a written code of fundamental rights figured


\(^{47}\) Bipan Chandra et.al. (2002), p. 22.


subsequently in the deliberations of the Sapru Committee appointed by an All-Parties’ Conference (1944-1945) which considered these rights necessary not only as “assurances and guarantees to the minorities but also for prescribing a standard of conduct for the legislatures, governments and the courts.”

The British government in January 1946 sent a Parliamentary Delegation to India and in March the Cabinet Mission came to India. This Cabinet Mission was assigned a difficult task of assisting the then Viceroy in setting up in India the machinery by which Indians could devise their own Constitution and of mediating between the Congress and the Muslim League to find a middle ground upon which both the communities could be constitutionally united.

The British Cabinet Mission in 1946 recognized the need for a written guarantee of Fundamental Rights in the Constitution of India in its statement of May 16, 1946, envisaging a Constituent Assembly for framing the Constitution of India. It recommended the setting up of an Advisory Committee for reporting to the Assembly on Fundamental Rights. The Constituent Assembly was formulated by electing its members by provincial legislatures.

In August 1946, India was heading towards independence and the problem was how to bring the Congress and the League together in the Constituent Assembly and to obtain their cooperation in forming the Interim Government envisaged in the Cabinet Mission Plan. The then Viceroy in India Wavell tried his level best to bring about reconciliation. Meanwhile, the Congress went ahead with its plans for the formation of a Assembly, appointing an Experts Committee to draft fundamental rights and to arrange the early session. Therefore, the Congress at the Viceroy’s invitation formed the Interim Government. The meeting of the Assembly was convened on 9 December 1946, but the Muslim League boycotted it.

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51 Formulated at the initiative of Clement Atlee, the Prime Minister of the United Kingdom, the mission consisted of Lord Pathick Lawrence, Sir Stafford Cripps and A.V. Alexander. It reached Delhi on 24 March, 1946. The objective of the Mission was to help India attain freedom as speedily as possible.

52 Mauruce Gwyer and A. Appadorai (1957), p. 582.

53 *ibid.*, p. 283.
On 3 June 1947, the then Viceroy Lord Mountbatten announced that on 15 August England would recognize the existence of the two independent states, namely, India and Pakistan. Accordingly, the Indian Independence Act was passed by the British Parliament that came into force on 15 August 1947, thereby giving legally to the Constituent Assembly, the status that it had assumed since its formation.54

4.3.2 Promotion of Egalitarianism

An aspect of its commitment to the creation of an egalitarian society was the national movement’s opposition to all forms of inequality, discrimination and oppression based on sex and caste. It allied itself often with subsumed movements for social liberation of women and the lower castes. It brought millions of women into the political arena. Its reform agenda included the improvement of their social position including the right to work and education and to equal political rights. However, the movement failed to form a strong anti-caste ideology, though Gandhi did advocate the total abolition of the caste system itself in the 1940s. It was because of the atmosphere and the sentiments generated by the national movement that no voices of protest were raised in the Constituent Assembly when reservation for the Scheduled Castes and the Scheduled Tribes were mooted. Similarly, the passage of the Hindu Code Bills in the 1950s was facilitated by the national movement’s efforts in favour of the social liberation of women.55

Thus, we can say that the Independent India has, as a whole, remained loyal to the basics of the legacy of the national movement, the large part of which is enshrined in the Constitution of India and has been incorporated in the programmes and manifestos of most of the political parties. If we talk of legacy, especially of a prolonged movement, it tends to endure for a long time. But no legacy, however sound and strong, can last forever. It tends to erode and become irrelevant unless it is constantly reinforced and developed and sometimes transcended in a creative manner to suit the changing circumstances.56

56 ibid., p. 30.
4.3.3 The Peasants’ and the Workers’ Movements

The 1930s witnessed nation-wide awakening and organization of peasants and workers in India. The two nationalist mass movements, that is, the Non-Cooperation and the Civil Disobedience Movement of 1920-22 and 1930-34 respectively had politicized peasants and workers on a large scale. The economic depression that hit India and the World after 1929 also worsened the conditions of peasants and workers in India. Prices of agricultural produce dropped by over fifty per cent by the end of 1932. Employers tried to reduce wages. Peasants all over the country began to demand land reforms, reduction of land revenue and rent as well as relief from indebtedness. Workers in factories and plantations increasingly demanded better conditions of work and recognition of their trade union rights. The Civil Disobedience Movement and the rise of the left parties and groups produced a new generation of political workers who devoted themselves to the organization of workers and peasants. Consequently, there was rapid growth of trade unions in the cities and Kisan Sabhas (peasant’s unions) all over the country, particularly in U.P, Bihar, Tamil Nadu, Andhra Pradesh, Kerala and the Punjab. The first All India Kisan Sabha, was formed in 1936 under the presidency of Swami Sahajanand Saraswati. For the first time in the history of the Indian people, an all

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57 In 1930s a new trend began in the Indian history with the shift in the peasant organizations and struggles towards the left. A classical instance in this regard is the career of Swami Sehjanand Saraswati in Bihar who during his association with the peasant struggles completely turned to the left ideology. It was during this period that a systematic attempt to form peasant organizations was actually made. The communists made successful inroads into the peasantry and for the first time the peasant based movements were waged to foster changes in the agrarian structure. The communists organized two important movements, namely the Tehhaga movement in Bengal and Telangana movement in the former Hyderabad state. These movements took place in 1940s. Confronted with Second World War, 1942 Quit India Movement, Independence in 1947 and partition and communal riots, both the movements were able to carve out their own niche in the history of modern India. For further details, see: Paramjit S. Judge and Gurpreet Bal (1996): Strategies of Social Change in India, New Delhi: M.D Publications, p. 176. Also see: A.R. Desai (1979): Peasant Struggles in India, New Delhi: Oxford University Press, 1979 and D.N. Dhanagare (1983): Peasant Movements in India (1920-1950), New Delhi: Oxford University Press.

India organization of the Indian peasantry came into existence with a programme of common demands and expressed the aspirations of the entire kisan humanity of this vast land. It revealed the birth of a new higher consciousness and a wider perspective which transcended the mere local perspective existing in the pre-British India among the rural population. The All India Kisan Sabha carried on wide educative propaganda amongst the Indian kisans. It asked for collective affiliation to the Indian National Congress, which, did not agree to the suggestion. On the eve of elections in 1937, the Indian National Congress published an Election manifesto which embodied democratic demands for civil liberties and a social economic programme of radical improvement of the conditions of the kisans. However the Congress government failed to meet the obligations made to the kisans. As a result, the kisan sabhas organized a number of meetings, conferences and kisan marches to bring pressure on them to implement their demands. Similarly All India Trade Union Congress was established in 1920 for coordinating the activities of all workers’ organizations in the entire country and to further the interest of Indian working class in social, economic and political matters. Gradually eminent nationalist leaders like C.R. Das and V.V. Giri were connected with the AITUC. At its Nagpur session, the left wingers, who gained an upper hand, demanded the boycott of Whitley Commission on Labour. There was also a sharp difference of opinion on issues like Indian representation at the International Labour Conference at Geneva. Since the leftists secured a majority in AITUC, N.M. Joshi’s group withdrew itself from the organization and formed a separate organization namely All India Trade Union Federation. It was only in 1938 that the two federations got united with the result that the AITUC emerged much stronger than ever. On account of the formation of the workers’ trade unions, several legislative efforts were made in the twentieth century to


60 The Royal Commission on Labour was appointed in 1929, under the chairmanship of J.H. Whitley to inquire the existing condition of labour in industrial undertaking, plantations etc. This Commission submitted its monumental report on 14 March 1931. Most of the labour legislations enacted subsequently were the result of the recommendations of the commission. The Factories Act 1934 was passed which drew a distinction between the perennial and seasonal industries. For further details see: Balwant Singh (1996): Labour Policy and Administration, New Delhi: M.D Publications, p. 17. Also see: Report of the Indian Statutory Commission, Recommendations (1988), Vol. 2, New Delhi: A.K. Mittal Publications, p. 74.
protect the rights of the workers and improve their working condition workshops, mines and plantations and other establishments. Minimum wages, bonus, working hours, medical facilities, housing and many other matters have been covered by legislative enactments.  

**4.3.4 Formation of the Indian Civil Liberties Union**

The genesis and development of the Civil Liberties Movement in the colonial India was closely associated with the national liberation movement and various other mass movements. From the early nineteenth century, civil libertarian consciousness was manifested through demands for freedom of press and freedom of expression and of racial discrimination, equality before law etc. This period witnessed the birth of new nationalism in India, borne by a new generation “with new thoughts and new ideas, impatient of its dependent position and claiming its rights as free citizens of the British Empire.”

The Civil Liberties Movement in the pre-independence period was characterized by its anti-British, anti-imperialist content. The colonial rulers denied even basic elementary rights to people. The martyrs who laid down their lives for the cause of the country and who are now being honored were then branded as the criminals. Those who fought for liberation of the country were imprisoned and were punished with rigorous imprisonment. Preventive detention was almost a routine affair. Special courts were established for trying the so called “terrorists”, many of whom were sent to the Andaman Islands. The families of the freedom fighters were even prosecuted. The people from all classes - from working class to bourgeoisie - joined this movement and it centered around ‘prisoners release’ and gaining rights which were trampled with.

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Another major landmark in the growth of civil liberties and human rights was the formation of the Indian Civil Liberties Union in 1936 under the chairmanship of Rabindra Nath Tagore at the initiative of Jawahar Lal Nehru. The inherent spirit of the Indian Civil Liberties Union was precisely reflected in the closing sentence of Nehru’s address at the inaugural session: “The idea of civil liberty is to have the right to oppose the government”. That in a capitalist state the civil liberties movement must, in essence, be an anti-state movement in spirit was realized even then, and it obviously had, and still now has, a serious and far-reaching impact on the civil rights movement in our country.” The Indian Civil Liberties Union was quite active in the political arena of our country till the mass-explosion of the Quit India Movement in 1942. The Civil Liberties Union was to be formed along non-party lines and could be joined by any Indian opposed to the violation of the Indian people’s civil liberties by the British Government. The task of the Union was to gather information about the suppression of civil liberties in the provinces, collect facts, publish them, mobilize public opinion, keep in touch with other foreign unions and reach out to the world opinion through them. It was the manifestation of the people’s democratic spirits.

That the activities of the movement had a considerable impact was proved by the fact that the Congress ministries formed in many provinces after the 1937 elections were directed by the Congress Working Committee to show respect to civil liberties. But one of the inherent weaknesses of the movement on a national scale was that the cases of the revolutionary freedom-fighters following the path of armed struggle were not given proper importance. It should be noted that even today, almost 75 years after the organized beginning of the civil liberties movement in our country, not only the Congress, but rather all the ruling parties, be they of the “left” or “right” variety, are virtually denying the civil rights of those political activists who follow the path of armed struggle to fulfill their dream of leading the Indian people to liberation, “enjoying freedom from want and hunger” as postulated in the Universal Declaration of Human Rights. Still the Indian Civil Liberties Union played a commendable role in developing civil liberties consciousness among a significant section of the people in a colonial set-up.

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66 Dipankar Chakrabarty (2011), p. 34.
The integration of human rights issues into the struggle for independence transformed the national movement from a mere fight against the British Government into a vibrant multi-dimensional phenomenon with respect for democracy, civil-liberties and people’s urge for self-determination. As a result, the society after independence was able to sustain democracy against all odds. Over the years, this democracy has grown and reached out to the marginal groups and sections. This has given them the incentive to conduct their sectional struggles within the democratic framework rather than against it.

4.3.5 Role of Mahatma Gandhi in Promoting Human Rights in India

Gandhi’s techniques and practices fully reflected fundamentals of human rights. He preached and practiced the principle that ultimate sanction of authority and of public policy rested in respect for dignity of an individual and in his welfare. Gandhi was, in fact, endowed with a clear vision of human rights and human values. Each of his movements, big or small, were so devised so as to represent such values that are today considered to be the most important for human existence and human development. The Gandhian thoughts and principles transcend their geographical location to be equally applicable everywhere on the earth. The morality contained in them is so practicable and their appeal so universal that they can easily be called universal moral rights, which is co-terminus with human rights. "His principal aim was to place man at the centre of all schemes of things, all values, all actions and all philosophies . . . . For Gandhi, life and history had no purpose beyond what human beings put into them." The movements undertaken by Gandhi seek to establish that his field of action was dominated by human concerns which outweighed any other considerations so far.

The spirit of human rights in the Gandhian ethos and values was not restricted merely to the usage of the term 'Human Rights' per se, rather there was an undercurrent of the philosophy of human rights in the work and words of Gandhi. The central evils against which he fought were racialism, imperialism, communalism and untouchability. In South Africa, he fought against the racially discriminatory policies of the whites. In India, as a reformer, he fought against the social injustices, tyranny and oppressions. Gandhi believed that the first condition of non-

69 ibid., p. 21.
violence was justice in every department of life. He proclaimed non-violence as the greatest and the most active force in the world. The ethic of non-violence is the highest manifestation of belief in human equality and human rights. He condemned British imperialism as it had resulted in political and economic subjugation of India. In his view the subordination of life to materialism had led western democracies to the exploitation of the colonial world.

If we talk of India under the colonial rule, we find that the British Government had not only deprived the Indian people of their freedom but had also based itself on the exploitation of the masses which had ruined India economically, culturally, politically and spiritually. The dominant impulse in India under the British rule was that of fear - pervasive, oppressing, strangling fear; fear of the army, the police, the widespread secret service; fear of the official class; fear of laws meant to suppress and imprison; fear of the landlord's agent; fear of the moneylender and that of unemployment and starvation which were always on the threshold. People seemed to be helpless in the grip of a powerful monster, with their limbs paralyzed and minds dead. The peasantry was servile and fear ridden; the industrial workers were no better. The middle classes, the intelligentsia, who might have been beacon-lights in the enveloping darkness, were themselves submerged in this all-pervading gloom. It seemed impossible to pull India out of this quagmire of poverty and defeatism. Just at that time Gandhi appeared on the scene like a beam of light that pierced the darkness and removed the scales from our eyes.

The essence of his teaching was fearlessness and truth, and action allied to these, always keeping the welfare of the masses in view. He stood for an ideal social order in which there is no distinction of high or low and in which each is guaranteed the fruits of his labour on the one hand and prevented from pressing upon his neighbor on the other. Although he aimed to achieve human rights through the political rights but at the same time he felt that the political freedom had no meaning unless people are economically uplifted. A real

74 ibid., p. 392.
egalitarian society based on mutual love and harmony was his goal. He inculcated the revolutionary doctrine of equal distribution of wealth which could be achieved by means of passive resistance.  

The economic and social blueprint displayed awareness of the need to eliminate structural violence, so that society can truly be governed by the principles of *ahimsa*, non-violence and love, or mutual responsibility. He encouraged the organization of labour accepting the principle that those who toiled are the rightful owners of the produce of their labour, with the right to non-violently press for their legitimate claims against recalcitrant owners of land or capital. His earliest *satyagrahas* were directed against the Indian mill owners in Ahmedabad or British Indigo planters in Champaran, were, on the behalf of peasants and labourers. The history of labour-capital relations in Gujarat bear ample testimony to the success of his efforts. These campaigns, though 'sub-political' by the standards of modern style Indian politics, gained him both a local following in his home town of Gujarat and across the subcontinent in Bihar, and wide public esteem as a saintly worker and a humanitarian righter of 'wrongs'.

4.3.5.1 *Gandhi’s Views on Untouchability*

Gandhi's views in respect of all religions and the gospel of brotherhood are widely known. His lifelong crusade against the elimination of untouchability and his respect for women as equals demonstrate his universal respect for human beings. He took up cudgels against social evils with equal enthusiasm and sought to establish an order which would give everyone equal space to exist and equal freedom to live. He could never tolerate untouchables being treated as sub-human beings. He once wrote, "I am not born as an untouchable but have been for the last fifty years an untouchable by choice". He declared firmly that "untouchability is a crime" and championed the cause of the unapproachables and untouchables for the recognition of the most

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elementary human rights.  

Not only this, he took up satyagraha to procure for them, the most basic civic rights like right to use public roads, wells, schools etc. It was really cruel to deny them only peripheral existence which was a sheer violation of the principle of equality.

When the opportunity presented itself, he became involved with Vykom satyagraha undertaken on behalf of the untouchables of Travancore in the spring of 1924, and pursued the movement for over sixteen months. The fight for human rights was the key to that satyagraha. Gandhi realized that the human rights begin in small places, in the community one lives in, or in the neighbourhood where one works. These are the places where human beings seek justice and equal dignity without discrimination. Unless these rights were observed, they can have little meaning elsewhere. The untouchables, who, constituted nearly 40 million people were denied even the ordinary facilities of life. He dedicated his entire life to their service. Influenced mainly by Gandhi, the Congress had accepted the removal of untouchability as a primary and necessary means for the goal of social equality in independent India. Therefore, when they came to power in 1947, they were obliged to execute their pledge. . . . Article 17 of the Constitution relating to the Fundamental Rights specifically declared:

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\text{Untouchability is abolished and its practice in any form forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law } . . . . . \]

In general, the Preamble to the Indian Constitution speaking of individual dignity indirectly speaks of the removal of untouchability.

4.3.5.2 Gandhi’s Views on Women Empowerment

The cause of the upliftment of women and their empowerment was very dear to him. The amelioration of the women's problems and their amalgamation into the mainstream politics

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81 ibid., p. 175.
were momentous achievements of Gandhi. He rests his case for equality of women on the fundamental equality as human beings. Hence as autonomous moral agents entitled to equal respect he encouraged them not only to participate in mass movements but in some cases for prohibition, for example, he specifically required that the principal work of picketing, of persuading people and pleading with them, and of taking deputations to the liquor shops, should be done by women alone. This would broaden their mental horizons, encourage them to think for themselves and improve their self-esteem.

Gandhi observed “when women, whom we call abala becomes sabala, all those who are helpless become powerful”. This message of Gandhi to the All India Women’s Conference in 1936 reflects the crucial importance Gandhi gave to the issue of women’s freedom and strength in the struggle to build a humane and exploitation free society. Gandhi saw women not as objects of reform and humanitarianism, but as self conscious subjects who could, if they choose, become arbiters of their own destiny. In this way, Gandhi represents a crucial break from the attitude of many of the leaders of the reform movements of the late nineteenth century, who tended to see women as passive recipients of more humane treatment through the initiative of enlightened male effort.

Gandhi was of the view that if women were to be ‘free’, they had to be ‘fearless’. He rightly realised that it was more a matter of psychological fear and helplessness, culturally imposed on women by society, than physical weakness which kept women crippled. His constant message to them was that bravery and courage were not the monopoly of men. Even if all women could not become Ranis of Jhansi, they could emulate the still better example of Sita, whom even the mighty Ravana dared not touch. Gandhi felt that the real strength of women was her consciousness of ‘purity’ and ‘chastity’. This dazzling purity could disarm even the most beastly of men.

Gandhi had also visualized a great role for women in eradicating the evil of communalism. His appeal to women was to refuse to cook, and to starve themselves in protest so long as

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86 *id.*,
their men “do not wash their hands of these dirty communal squabbles”. Gandhi’s appeal reached women everywhere in India. He expected great things from them in the areas of work concerning purity of life, removal of untouchability, propagation of Khadi, communal harmony and Swadeshi. His logic was simple: “If Kaikeyi could obtain all that she wanted from Dashrath by dint of Duragraha, what could they not achieve with the help of Satyagraha?”  

4.3.5.3 Gandhi’s Views on Economic Rights

As far as economic rights are concerned, there is hardly any difference in what Gandhi propounded and what is enunciated in the declarations and conventions adopted by the United Nations. He wanted an economic system which guarantees the minimum necessities of life to all. No one should suffer from want of shelter, food and clothing. He equated political and economic freedom and was deadly against economic inequality and exploitation of the poor by the rich. He was appalled by the poverty to which most Indians had been reduced under the British rule. He once said, "India ought not to be drawn into the vortex of mad and ruinous competition which breeds fratricide, jealousy, and many other evils. England has sinned against India by forcing free trade upon her, it has been a poison for this country".

His model of economic development was based on Swadeshi which meant that every village in India become an almost self-supporting and self-contained unit, trading only for commodities that are necessary. The core concept of Swadeshi, that is, primarily using goods produced close at home and limiting one's demand and consumption, was subsequently woven into the philosophy of self-reliance, self-governing, self-sustaining, Indian economic and political development put forward by Mahatma Gandhi. The important goal served by swadeshi was the attainment of:

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(I) Positive Economic Nationalism, means industrialization of India through the investment of capital and efforts by the Indians with the help of state and through reduction of imports of foreign goods by means of fair competition;

(II) Political independence;

(III) National reconstruction through the indigenous world-view as an alternative to the western world-view; and

(IV) National Identity in which swadeshi had connection with economic, political, socio-cultural fears, frustrations and humiliations of a subject people facing the arrogance and hypocrisy of the British Imperial rulers.  

He stood for the right to protection against forced labour by landlords, freedom of religion, right to property and right to civil disobedience. Civil disobedience could be used in defense of basic human rights. ‘To accept defeat in the matter of free speech and free association is to court disaster. . . In the general interest, therefore, we must defend these elementary rights with our lives'. To offer civil disobedience in a just cause was the inherent right of a citizen, who could not give it up 'without ceasing to be a man'. He was a staunch supporter of decentralization of powers. It was he who, for the first time, in the twentieth century wished to revive the Panchayati Raj institutions with democratic basis of their own and invest them with adequate powers so that the villages could have a real sense of 'swaraj'. His efforts resulted into the introduction of article 40 in the constitution of India which states that the state shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'. Consequently most of the states enacted the Panchayati Raj Acts in their respective areas. To provide sustenance to the state power in this respect, the Parliament of India had to make provision for the Panchayati Raj System vide 73rd and 74th amendment of the Indian Constitution.

Thus we see that Gandhi had a strong commitment to the notion that certain rights belonged to human beings simply by virtue of their being human. In his campaign for the abolition of

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92 *ibid.*, p. 56.
untouchability, he explicitly and repeatedly appealed to the basic principle of giving 'equal rights to all human beings. He was also committed to the position that the right to perform one's duty was a fundamental right which was worth dying for. He expressed the following views when he was asked to express his views on the Universal Declaration of Human Rights before it was adopted in 1948:

> I learnt from my illiterate but 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 relate every right to some corresponding duty to be first performed.  

However, there is also the other side of what he preached. Although he attacked 'untouchability', he did not condemn the caste system which breeds it. He wrote in 1925 that there should be "castes so that we may reproduce the old system of four varnas" Moreover they should include adherence to hereditary occupation "to prevent competition" based on birth, although in rare instances an individual might display talents appropriate to some other caste. This Gandhian attitude not only ignored the influence of environment in contrast to heredity but also the right of individual to a "higher", better environment to develop other capacities. "For years I have puzzled over this problem", criticized Nehru, "why with all his law and solicitude for the underdog, he yet supports a system which inevitably produces it and crushes it". His concept of individual is so much loaded with his gospel of God, Truth, non-violence, religion and spiritualism that it relegated the reality of the individual to the background. He denies his individual par excellence even the basic right to life, i.e. the right of self-defence. If there is a choice between killing one who attacks you or getting killed, Gandhi would advise the latter course preferably. Even prior to the framing of the Constitution for the free India, Mahatma Gandhi had announced before the Second Round Table Conference that his aim was to establish a society in India in which there would be no distinction between high and low class people, that women should enjoy the same rights as men; and dignity and justice, social, economic and political would be ensured to the teeming millions of India. This was one of the

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objects which inspired Jawaharlal Nehru in drafting the historic Objectives Resolution in the Constituent Assembly, and which was adopted on January 22, 1947. Clause (5) of this resolution stated:

This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution:

(5) “Wherein shall be guaranteed and secured to all the people of India Justice, social, economic and political; equality of status, of opportunity, and before law; freedom of thought, expression, Belief, faith and worship, vocation, association and action, subject to law and public morality . . .”

This ideal of the Objectives Resolution was reflected in the Preamble to the Constitution which was adopted in November 1949 with the specific mention of ‘dignity of the individual’.

The process of Constitution making was made more participatory by asking from the public at large. There were hundreds of responses, a sampling of which gives a clue to the interests the law makers had to take account of. Thus the All India Varnashrama Swarajya Sangh asked that the Constitution ‘be based on the principles laid down in ancient Hindu works’. The prohibition of cow slaughters and the closing down of the abattoirs was particularly recommended. Low caste groups demanded an end to their ‘ill treatment by upper caste people’ and ‘reservation of separate seats on the basis of their population in legislature, government departments and local bodies etc.’ Linguistic minorities asked for ‘the freedom of speech in the mother tongue’ and ‘redistribution of provinces on linguistic basis.’ Religious minorities asked for special safeguards and bodies as varied as the District Teachers Guild of Vizianagaram and the Central Jewish Board of Bombay requested ‘adequate representation . . . on all public bodies including legislatures etc.’

These submissions testify to the baffling heterogeneity of India, but also to the precocious existence of the rights culture amongst the Indians. The Constitution of India had to adjudicate among thousands of competing claims and demands. The task was made no easier than the

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turmoil of the times. The assembly met between 1946 and 1949, against a backdrop of food scarcity, religious riots, refugee resettlement, class was and feudal intransigence. As one historian of the process has put it, ‘Fundamental Rights were to be framed amidst the carnage of Fundamental Wrongs’.\textsuperscript{98} It is thus evident that during the period between 1946 and 1949, India had formulated the concept of human rights.\textsuperscript{99}

4.4 Conclusion

Thus we have seen that the recognition, protection and implementation of the human rights in the Constitution of India had its genesis in the forces that operated in the national struggle for independence during the British rule. After witnessing the colonial rule, every Indian was of the firm opinion that these rights were not only basic but also inalienable for them for leading a civilized life. Today, even after so many years of independence, we are still close enough to the freedom struggle to feel its warmth and yet far enough to be able to analyse it coolly. While analyzing it, we must agree that our past, present and future are inextricably linked to it. Men and women in every age and society make their own history, but they do not make it in a historical vacuum, \textit{de novo}. Their efforts, however innovative, at finding solutions to their problems in the present and charting out their future, are guided and circumscribed, moulded and conditioned, by their respective histories, their inherited economic, political and ideological structures. Thus we can say, the path that India has followed since 1947 has deep roots in the struggle for independence. The political and ideological features, which have had a decisive impact on the post-independence developments, are largely, legacy of the freedom struggle. It is a legacy that belongs to all the Indian people, regardless of which party or group they belong to now, for the party which led its struggle from 1885 -1947 was not then a party but a movement.

As a mass movement, it was able to tap the diverse energies, clients and capacities of large varieties of people. It had a place for all - old and young, rich and poor women and men the intellectuals and masses and developed - into one of the greatest mass movements in the world history. It was fully committed to a polity based on representative democracy and the

\textsuperscript{98} \textit{ibid.}, Also See: Granville Austin (1999), p. 71.

full range of civil liberties for the individual. It provided the experience through which it could become an integral part of Indian political thinking.

Our Constitution was promulgated on 26 January 1950. The Preamble, the Fundamental Rights, the Directive Principles of State Policy together provides the basic human rights to the people of India. Our courts, too, have played a positive role in incorporating and enforcing human rights. The Supreme Court of India, through judicial interpretations has also widened the horizon of human rights in India. All these developments have been dealt in detail in the subsequent chapters.