CHAPTER 2

MEANING AND CONCEPT OF HUMAN RIGHTS
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Concept of human right is based on the dignity and worth of the individuals, the unit of creation without reference to man made division based on colour, race, sex, religion etc. Human rights are essential for the realization of the true potential of every human being. The basic concept of equality is ingrained in human dignity which contains not only the civil and political rights but also the social, economic and cultural rights. These rights are most precious possession of mankind and a world without them will have to face a perpetual risk of moral depredation. Human rights have been recognised as standard of achievement and norms of behaviour of all member of society. They form foundation of society and are inalienable. As distinct from other moral and legal rights, human rights are claimed against the state.¹

Human rights can be classified into three main categories (1) right of personal integrity (2) civil liberties and (3) social and economic rights. Rights of personal integrity involves right to personal safety and freedom. These include freedom from slavery torture and unreasonable imprisonment. Civil liberties are the rights of each person to express belief through words and action. These rights includes freedom of speech, association, thought, conscience and religion. Other civil liberties include the right to vote and run for office right to marry and have a family. Social and

economic rights involve basic human needs and rights of development. These include right to food, shelter, medical care, education and right to work.\(^2\)

**Meaning of Human Right**

The word human right covers every aspect of human dignity. Rights that belong to an individual as consequence of being human is called human right. Protection of Human Rights Act, 1993 defines the human rights. The Act defines that "Human rights means the rights relating to life, liberty, equality and dignity of the individuals guaranteed by the Constitution or embodied in the International Covenants and enforceable by the Courts in India."\(^3\)

Justice P.N. Bhagwati observed in case of *Maneka Gandhi v. Union of India*\(^4\) that all those rights which are essential for the protection and maintenance of the dignity of individuals and create conditions in which every human being can develop his personality to the fullest extent may be termed as human rights.\(^5\)

D.D. Basu defines human right as those minimum rights which every individual must have against the state or other public authority by virtue of his being a member of human family irrespective of any other consideration.\(^6\) Maurice Cranston in his

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\(^3\) Section 2(d) of the Protection of Human Rights Act, 1993

\(^4\) AIR 1978 S.C. 597


\(^6\) Supra note 1 p.8.
book 'What is Human Right' said that human rights are those rights which belong to an individual as a consequence of being human as a means of human dignity. These are the rights which all men everywhere at all time ought to have something of which no one may be deprived without grave affront to the justice.\(^7\)

Second preambular paragraph of United Nation's Charter provides that the expression 'human rights' denotes all those rights which are inherent in our nature and without which we cannot live as human being\(^8\). According to 1st and 3rd preambular paragraph of the United Nation Declaration on Human Rights, 1948, human rights being eternal part of the nature of human being are essential for individuals to develop their personality, their human quality, their intelligence, talent and conscience and enable them to satisfy their spiritual and other higher needs. These are inalienable rights which belong equally to all members of human family and as such should be protected by rule of law if a man is not to be compelled to have recourse as a last resort to rebellion against tyranny and apprehension\(^9\).

According to Justice A.S. Anand "Human rights are those rights which inherits in every human being by virtue of being a member of the human family". These are nothing but what had been traditionally known as natural rights which means right bestowed upon human being by nature. Human rights are based on mankind's increasing demand for a decent civilised life in which the

\(^7\) ibid
\(^9\) ibid
inherent dignity of each human being is well recognised and protected. Human rights are fundamental to our very existence without which we cannot live as human being." 10

J.E.S. Fawcett in his book "The Law of Nations has defined the human right: Human rights are some times called fundamental rights, basic rights or natural rights. As fundamental or basic rights they are those which must not be taken away by any legislatures or any act of government and which are often set out in a constitution. As natural rights they are seen as belonging to men and women by their very nature. Another way to describe them would be to call them common rights which all men or women in the world should share." 11

Mahatma Gandhi had a clear vision of human rights which he had proclaimed as early as in 1916. He said "Every human being has a right to live and therefore where withal to feed himself anywhere necessary to clothe himself." 12 In 1931 he again said "Every man has an equal right to the necessaries of life even as birds and beasts have" 13

The Congress Declaration of Independence of January 26, 1930 drafted by Gandhiji proclaimed that "We believe that it is inalienable right of the Indian people, to have freedom and to enjoy

13 ibid
the fruits of their toil and have necessities of life so that they may have full opportunities of growth."\(^{14}\)

It was found that effort of Gandhiji influenced the international organizations because United Nation Declaration of Human Rights incorporated both the rights of freedom as well as right to basic necessities of life within the concept of human right.\(^{15}\)

There are two main approaches to explain the nature and meaning of human rights.\(^{16}\) First is philosophical approach that is also known as theoretical approach; second is known as pragmatic approach.

**1. Philosophical Approach**

Under philosophical theories there are following five theories to explain the right of men.\(^{17}\)

(a) The Natural Right Theory  
(b) The Legal Right Theory  
(c) The Historical Theory of Rights  
(d) The Social Welfare Theory of Rights  
(e) The Idealistic Theory of Rights

**(a) The Natural Right Theory**

This theory postulates that the human rights are the claim upon or against the society and these rights exists independent of

\(^{14}\) ibid.  
\(^{15}\) ibid.  
\(^{16}\) Supra note 8 p. 13.  
\(^{17}\) ibid.
and even prior to the formation of the society. Thus it opposes the idea that the human rights are conferred upon the individual member by the society in which he lives.\textsuperscript{18} This theory contains following three characters.

Firstly is that the human rights reside inherently in the individual human being even prior to his participation in the society. State simply recognises them.

Secondly human rights are inalienable natural and inherent. These are not identified with norms of positive law. They are independent of positive law. If any system does not recognise this right then it is called that he is oppressing the human rights.

Thirdly is that all human beings are said to be equal.

Sometime natural law as the basis of human right is criticized on the following grounds.\textsuperscript{19}

(i) All rights are legal rights and since natural rights are the creatures of the natural laws they are as metaphor.

(ii) Natural law theory regards that what is natural is innate universal or immutable. But there have been inflicting interpretation as to what is natural? Thus the meaning of the law of nature is not clear.

However it has to be admitted that the nature has greatly influenced the growth of human rights law.

\textsuperscript{18} ibid.
\textsuperscript{19} Supra note 2 p.11
(b) Legal Right Theory

This theory maintains that rights are the creation of the State. They are neither absolute nor inherent in the nature of man. These rights like life, liberty, property are created by the law of the land. According to this theory recognition of rights by the state is necessary for its enforcement. If state does not recognise any right it cannot be enforced. Jeremy Bentham has criticised the natural right theory he said that it is nonsense upon skills. 20

(c) The Historical Theory of Rights

According to this theory rights are creation of historical processes. A long standing custom in course of time concretize in the specific forms of the rights. For example, a person receives birthday gift from his relatives regularity for a long time develops expectation to receive it as a matter of right. Right of way, right to light, right to air, are the rights originated because of continuous use for a long time. 21

Historical theory of right has certain limitations. First this theory has more exaggeration than truth in it. For example, practice of slavery which was once considered lawful cannot be claimed as matter of right. Secondly to relate origin of right to custom is to stop all social reforms. For example practice of sati, polygamy, child marriage and untouchability has once been recognised as valid custom but now they are disapproved. 22

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20 Supra note 15 p. 15.
21 ibid p. 16
22 ibid
(d) The Social Welfare Theory of the Right

Another theory which has been advocated as to the basis of human right is social welfare theory. The theory maintains that what conforms to the welfare of an individual represents the total sum of his happiness and what conforms to the interest or welfare of a community represents the total sum of happiness of the individual composing that community. Under the social welfare theory of human rights, those rights are considered genuine human right which tends to increase the total happiness of the human being. Thus according to this theory human rights are those which constitute permanent and general condition of human happiness.\(^{23}\)

This theory has some limitations. The above theory generates that the happiness of the individuals composing community is necessarily the interest of that community. There is distinction between individual’s rights and rights of community. The individuals rights are distributive and individualised which provides resources and opportunities to the individuals, communities rights on other hand are aggregative and non-individualised. So there are possibilities of unequal distribution. Thus, social welfare theory stress upon social goal by which community interest to be achieved by the society and not on the rights of individuals. Consequently happiness and freedom constitute the foundation of human rights.\(^{24}\)

\(^{23}\) Supra note 19.

(e) **Idealistic Theory of Right**

According to this theory right of personality is supreme and absolute right. All other rights like right to life, liberty, property are derived from it. This theory insists on inner development of a man on the development of his full potentiality. For example I have a right to life only to the extent to which it is essential for the development of my full potentiality. Society may not permit me to take away my life or to commit suicide. But it has also limitations because it is difficult for the state to ascertain that up to which extent various rights are required for the development of potentiality.

(2) **Pragmatic Approach**

Apart from the above another way of looking at the meaning and nature of human rights is pragmatism. According to this theory every right has validity through some institution. Thus every right which is to be defined can be defined with reference to some institutional structure. For example a room can not be defined without referring to its wall, in the same way human rights cannot be defined without referring to institutional settings. Fundamental rights under the Indian Constitutions are incorporated in part III of the Constitution of India. Though word fundamental right has not

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25 Supra note 15 p. 17  
26 ibid.  
27 ibid  
28 ibid
been defined at anywhere in the Constitution, but after careful
examination, it can be concluded that those rights given in part III
of the constitution imposes restrictions on the power of State.
Similarly the nature and meaning of human rights as referred in
United Nation Charter can be ascertained with reference to human
rights instruments on international levels, like United Nation
Declaration on Human Rights, 1948, International Convention on
Civil and Political Rights, 1966, International Covenant on
Against Torture 1984 etc. Apart from the above, on regional level,
European Convention on Human Rights, American Declaration on
Human Rights and African Charter on Human Rights of People are
the human rights instruments on regional level. Besides these
treaties are also important instrument to deal with human rights.
For example Convention Relating to the Status of Refugees and
status of stateless person which contains provisions for the specific
application of right to asylum.\textsuperscript{29} At present the meaning of human
right is ascertained as it is given in United Nation Human Rights
instruments such as in United Nation Declaration of Human
Rights, 1948.

\textsuperscript{29} ibid.