Chapter-II

HUMAN RIGHTS JURISPRUDENCE:
HISTORICAL PERSPECTIVE

2.1 Introduction

The philosophy of Human Rights is reflected in the following popular version “Loka Samastha Sukhino Bhawantu” which means that the entire humanity be happy. The greatest gift of classical and contemporary human thought to culture and civilization is the notion of Human Rights. The struggle to preserve, protect and promote basic Human Rights continues in every generation in every society. New rights arise from the womb of the old. Today we widen the sphere of Human Rights thought and action to new areas and constituencies¹.

Human Rights are rooted in the culture and values of every nation of the world. To understand the true significance of the concept of Human Rights, we must know its historical context. The development of Human Rights and then recognition and protection at the international level can be divided into different periods. It would therefore be logical to start with the concept of natural right which eventually led to the formulation of Human Rights.

2.2 Natural Law and Natural Rights in Ancient times

The idea of Natural Rights is very old. In the classical literature of Ancient Greece from 5th century B.C. we come across a striking expression of the belief in the power exercised by the gods on human society, based on law. According to the Ancient Greece writers, the god establishes a law which stand above the obligations and interdictions imposed by the rules of the community².

¹ Upendra Baxi, “In human wrongs and Human rights, un conventional essays”, 1994 Har Anand Publications, New Delhi -110017, P.1
In Roman law there was a distinction between national law (jus civile) and the law which is actually common to all nations (Jus gentium). Jus natural was the law of nature which is fixed and immutable, higher to all human laws derived from the dictates of right reason.

Marcus Tullius Cicero (104-43 B.C), the great Roman jurist declared that there is one eternal and immutable law which will apply to all people at all times and which emanates from the God is Natural Law.

The higher moral law and above the positive law embodying certain values of universal validity like Dharma (righteousness) Artha (wealth), Kama (desires), Moksha (salvation) were expounded by ancient Indian Philosophers and thinkers 5000 years ago with a view to establish a harmonious social order by striking a balance between inner and outer, spiritual and material aspect of life.

2.3 Natural Law and Natural Rights in Middle ages

Natural law acquired a new role and phase during medieval period in the works of the Christian theologians in the forms of a belief in a law of God, above all human laws. According to St. Thomas Aquinas (1225-1274) the law of nature is the foundation of all human law. The state is subject to that higher law which determines the relation of the individual to the state. This idea led to the establishment of doctrine of natural rights and by the end of Middle Ages the concept of natural rights of man became well established. All this led to the formulation of right to revolt against a tyrannical ruler.

In middle ages, a number of Acts were enacted to show the superiority of Natural law and Natural Rights. The principle of the Habeas Corpus Acts latent in the 39th clause of Magna Carta was acknowledged already in 1188 by Alfonso IX at the certes of Leon. The great Charter of the liberties of England or the Magna Carta of

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3 The Expression “Jus Gentium” develops in more recent times into the concept for the rules of law regulating relations between states i.e., International law
1215 was imposed on King John by the prelates, Earls and barons of his realms after his defeat by the king of France in 1214. Charters of liberty are steps towards the realization and implementation of Human Rights. Magna Carta of 1215, Petition of Rights of 1628; Habeas corpus Act of 1679, Bill of Rights of 1689 are some of such steps taken in England.  

2.4 Natural Law and Natural Rights in 17th and 18th Century

The key notion of the social contract theory implied the existence of rights which the individual possessed before entering organised society. The contributions of Hugo Grotius, Vattel, Pufendorf and Wolff in the development of the concept of natural rights are commendable.

There were other factors which emphasised the vitality of the natural rights of man. Milton’s appeal to the natural freedom of man was the basis of his claim to be ruled by law and not by the arbitrary whim of man; the insistence in the course of the puritan revolution, on natural rights in support of political freedom, social equality and universal suffrage; the place which Blackstone assigned to the natural rights of man are some of the examples of the factors which gave force to the doctrine of natural rights in 16th century.

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6 The main proponent of social contract theory were Grotius, Hobbes, Locke and Rousseau. According to Grotius, Political Society rests on a ‘social contract’. It is the duty of the sovereign to safeguard the citizens because the former was given power only for that purpose. According to Hobbes, out of chaos one man came and known as Leviathan. He had superior power. People entered into a social contract and transferred all authority to sovereign. According to Locke, two social contracts were entered into i.e., Pactum Unionis and Pactum Subjectionis. From this he derived the doctrine of inalienable rights. ‘Social Contract’ and ‘Natural Law’ received a new interpretation from Rousseau. According to him ‘Social Contract’ is not a historical fact but a hypothetical construction of reason. He emphasized on General Will.
The Virginian Declaration of Rights of 1776; other similar Constitutional enactments in the same year; the Constitution of New York and of New Georgia of 1777, and that of Marsachesels of 1780; the declaration of independence of 1776 and the Bill of Rights in the form of the first ten Amendments to the Constitution of America; the declaration of the Rights of Man and of the Citizen adopted in 1789 by the French National Assembly and prefixed to the Constitution of 1793 and 1795: all these expressly acknowledged the inherent rights of Man\textsuperscript{11}. All these enactments, the formal incorporation of the inherent Human Rights and the possibility of their consequent protection not only against the tyranny of kings but also against the intolerance of democratic majorities were a new idea. This was the first attempt to derive Human Rights from natural rights.

2.5 Natural Rights and Doctrine of Humanitarian Intervention in 19\textsuperscript{th} Century

At the turn of the century after the French revolution the doctrine of natural law was a doctrine of abstract and immutable principles and of eternal and inviolable Human Rights. In England, Burke launched his attack against the assertion of the Natural Law doctrines\textsuperscript{12}. In Germany, reaction against the philosophy of natural law emerges with “Historical School” of jurisprudence. But we come across the occasions in this century on which the doctrine of humanitarian intervention has been involved on behalf of countries. Such, for example was the intervention in 1827 by great Britain, France and Russia on behalf of the Greek revolutionaries, the numerous interventions protecting Turkish treatment of Armenians and other Christians and the protests by the United States in 1891 and 1905 against anti-Semitic outrages in Russia\textsuperscript{13}.

From the beginning of the 19\textsuperscript{th} century, attention was directed more to the rights of the individual than to the objective norms. But states have persistently claimed supreme authority over all persons with in their respective territories.

\textsuperscript{11} H. Lauther Pacht, “International Law and Human Rights”, London Stevenus & Sons limited 1950, p. 88
\textsuperscript{12} Burke, Reflections of the Revolution in France, Works, II, pp 331-32
Traditional international law recognised only states as the appropriate subjects of international law.

In consequence, subject to permissible exception, relation between a state and its subject according to traditional prescriptions are a matter of domestic concern of law, not covered by rules of international law\textsuperscript{14}. Under this prescription, therefore an individual can not claim international rights as against his own state and in the absence of international agreements, he has no locus standi before an international court for demanding redress against the violation of rights by his home states. It is pertinent to note here that inspite of the inadequacies of traditional international law an increasing number of treaties were entered into the purpose of which was to protect the rights of certain classes of persons\textsuperscript{15}. Then there was A.V. Diceys concept of Rule of law as opposed to the influence of arbitrary power or wide discretionary powers\textsuperscript{16}. These developments of 18\textsuperscript{th} and 19\textsuperscript{th} century culminated the idea of Human Rights.

Many scholars have attempted to define the Human Rights in various terms. Some of the most significant definitions are:

\textbf{Richard Wasserstrom}: “one ought to be able to claim as entitlements (i.e. as Human Rights) those minimal things without which it is impossible to develop one’s capabilities and to have life as human being\textsuperscript{17}”. That is Human Rights are moral entitlements possessed only by persons.

\textbf{Tiber Macham}: “Human Rights are universal and irrevocable elements in a scheme of justice. Accordingly, justice is the primary moral virtue within human society and all rights are fundamental to justice”\textsuperscript{18}.

\textsuperscript{15} The most of these were the treties aimed at slavery and the slave trade in 1885 in the General Act of the Berlin Conference on Central Africa and in 1889, the Brussels Conference.
\textsuperscript{16} Diceys, “Law of the Constitution” 8\textsuperscript{th} edn, p.198.
\textsuperscript{17} Richard Wasserstrom, “Rights, Human Rights and Racial Discrimination”; Meldon (Ed.) Human Rights, Belmont, California, 1970, p. 96-101
Joel Feinberg: “Human Rights as moral rights held equally by all human beings, unconditionally and unalterably\textsuperscript{19}. That is for Feinberg Human Rights are moral claims based on primary human needs”.

Kant Baier: “Human Rights as, those moral rights whose moral ground and generating factors are the same, namely being human in some relevant sense\textsuperscript{20}.”

Cranstan: “Human Rights by definition is a universal moral right, something which all people, everywhere at all times ought to have, something of which no one may be deprived without grave affront to justice, something which is owing to every human being simply because one is human”\textsuperscript{21}.

D.D. Raphael: “Human Rights constitute those very rights which one has precisely because of being a human being”\textsuperscript{22}.

Marting Golding: “Human Rights as act of claiming, performed on the level of the human community”\textsuperscript{23}.

D.D. Basu: “Human Rights as 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\textsuperscript{24}.”

Apart from the definitions provided by scholars, the Universal Declaration of Human Rights, 1948, refers Human Rights as inalienable rights of all members of the human family. The above definitions generally focus upon the idea that Human Rights apply to all human beings because they are human beings.

2.6 New Attitude to the concept of Human Rights in 20th Century

Great importance has been attached in the 20th century to the Human Rights issue in the international arena and tremendous efforts have been made, through the formulation of new principles and procedures to transfer the promotion and protection of basic rights, from the hands of the states to an authoritative super national organisation. The uncompromising acceptance of the principle that “all men are born free and equal in dignity” has emerged pragmatically from the crucible of experience as the most valid of all working hypothesis of human relations. By the end of First World War, apart from political and civil rights the concepts of economic, social and cultural rights have also been developed. The idea that workers needed special safeguards was beginning to take hold in many industrial countries. Labour unions were establishing the right to collective bargaining; wages were being increased and hours were being reduced. The idea that the citizens had certain basic economic and social rights had been recognized in the Constitutions and Legislations of democratic countries.

2.6.1 The Leagues of Nations and Human Rights

After the First World, War the provisions of League of National Charter came into force. The covenant of the League of Nations reflected Human Rights. The phrase ‘Human Rights’ and Fundamental Freedoms did not appear in the covenant. The drafters of the covenant were pre-occupied with the maintenance of international peace and security, the pacific settlement of disputes, the establishments of a mandates system for former German and Ottoman territories and the protection of Minorities in central Europe. Neither the Council nor Assembly of the League subsequently dealt with the question of Human Rights. The wholesale and systematic suppression of Human Liberty in communist Russia, Fascist Italy and Nazi Germany were officially unnoticed by the League, although the implication of these acts of tyranny were recognised by many of its member States25.

In collaboration with League of Nations the International Labour Organization which was set up in 1919 rendered signal service in the field of Human Rights. The ILO was established on the basis of the realization that universal peace could be achieved only if it were based on social justice. The Assembly of the League endorsed in 1925 the Geneva Declaration of the Rights of the Child. The international action to eliminate the worst social evils like slavery, forced labour, the traffic in narcotics and the traffic in women and children was greatly strengthened under the League. In particular the development of conventions and recommendations by the ILO emphasized a new international concern in labour problems, wages, working hours, working conditions and social security. These activities of the League reflect the growing acceptance of the concept that the affairs of labour were matters of international as well as national concern\textsuperscript{26}.

In two fields of Human Rights, the League of Nations made a significant advance over the past. These fields are regulation of mandated territories and minorities system. The activities of the League in both these fields represented apart international concern with the Human Rights of individuals living in territories formerly governed by the enemy powers, and in part, the growing international concern with the right of self-determination of peoples and nations.

The International Labour Organisation and the League of Nations thus touched some aspects of the fields of Human Rights. Concern was shown especially in the fields of slavery, forced labour, mandated territories and minorities. The major work of the League and the ILO has provided an efficient system for developing and co-ordinating new international machinery for economic and social cooperation rather than to define rights and to device measures for promoting them.

In 1929, the Institute of International Law adopted declaration of International Rights of Man. It asserted that rights of a citizen laid down in several domestic Constitutions, particularly those of the French and the United States Constitutions were ordained not only for citizens but for all men. Article 1 of the Declaration lays down “it is the duty of every state to recognize the equal rights of every individual to

\textsuperscript{26} James Frederick Green, “the United Nations and Human Rights, the Brooking Institutions” Washington DC, 1956 P.10-11
life, liberty and property and to accord to all within its territory the full and entire protection of these rights without distinction to nationality, sex, race, language or religion”

2.6.2 Human Rights Provisions under the U.N. Charter

With the rise of fascism in Germany and Italy and the outbreak of world war-II, the question of Fundamental Rights of man became much more important in many international conventions, The United Nations Declaration of January 1, 1942 put on record that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom and to preserve Human Rights and justice in their own land as well as in other lands.

The big three (United States, Soviet Union and Great Britain) endorsed the above declaration in their conference of March 3, 1943. Then came the Philadelphia Declaration of the International Labour Organization 26th session which laid down “All human beings, irrespective of trade, creed, or sex, have the right to pursue both their material well being and their spiritual development in conditions of freedom and dignity of economic security and equal opportunity”.

The Dumbarton Oaks Conference of 1944 among the four big powers led to the first tentative draft of a new world organisation. At Yalta conference of 1945, the Great powers issued a declaration of liberated Europe where principles of Atlantic Charter and Declaration of United Nations were affirmed.

Then came on April 25, 1945 the San Francisco conference of the United Nations where of the Charter of United Nations emerged. It is important to note that till the coming into force of the U.N. Charter, Human Rights were expressed in pious terms in treaties. Prior to coming into force of the U.N. Charter Human Rights movement was confined to abolition of slavery, humanitarian laws of welfare, and protection of Minorities. The brutality committed by the Nazis and fascists during the second world war made it imperative for a world organization to proclaim and

advocate the protection of Human Rights. The U.N. Charter proclaims sacrosanct of Human Rights and Fundamental Freedoms.\footnote{Ibid 16.}

The United Nations Organisation was primarily concerned with evolving a mechanism to maintain international peace and security. The first documentary uses of expression “Human Rights are to be found in the Charter of the United Nations”. In its preamble, the Charter interalia reaffirms its “Faith in Fundamental Human Rights…” and Article thereafter stated that the purposes of the United Nations shall be, among others,

“To achieve international co-operation… in promoting and encouraging respect for Human Rights and for Fundamental Freedoms for all without distinction as to race, sex, languages, or religion….”.

The U.N Charter, however was not a binding instrument\footnote{Starke, “Introduction to International Law” 1984, p.350} and merely stated the idea which was later developed by the different agencies and organs.

The Universal Declaration of Human Rights\footnote{The preamble to the universal declaration of Human Rights states “It is essential if a man is not to be compelled to have recourse, as a last, to rebellion against tyranny and oppression that Human Rights should be protected by the rule of law”. The concrete nature of Human Rights are well brought out in Article 3 of the UDHR, it provides “Every one has the right to life, liberty and security of persons”}, which was adopted by the UN General Assembly on 10th December, 1948, has been proclaimed “as a common standard of achievement for all peoples and all nations”. It incorporates not only the traditional Civil Liberties but also Social, Economic and Cultural Rights. Together with it, the two principal international Human Rights instruments, namely the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights 1966 have given very wide connotation to the concept of Human Rights and fundamental freedoms\footnote{The International Bill of Human Rights comprises the following: 1. The Universal Declaration of Human Rights, 1948 2. the Covenant on Civil and Political Rights, 1966 3. The Covenant on Economic, Social and Cultural Rights, 1966; 4. The Optional Protocol to the Covenant on Civil and Political Rights, 1966.}. At regional level the European Convention on Human Rights was adopted in 1950, the Inter-American Convention on Human Rights in 1969, the African Charter on Human and
Peoples’ Rights in 1981; in 1994 the Council of the Arab League passed the Arab Charter on Human Rights. In order to add emphasis upon all those categories of Human Rights contained therein and to exemplify them, a number of international Human Rights instruments have been concluded. Some of them may be mentioned here, such as, the International Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Elimination of All Forms of Discrimination Against Women; the Declaration on the Right to Development; the Convention on the Rights of Child; the Convention on the Rights of Persons with Disabilities; the Convention for the protection of all Persons from Enforced disappearance and many more.

The question that, how far, the rights contained in the Universal Declaration of Human Rights, the two International Covenants and other Conventions have been translated into real rights of individuals, can be answered only after the examination of the individual legal system of the respective States.

In the field of Human Rights, international conferences have been held, in the past, on specific issues of Human Rights. For instance, to deal with the problems of women, four international conferences have been convened under the auspices of the United Nations. Similarly, conferences have also been arranged to discuss other issues of Human Rights such as minorities, racial discrimination, crime and torture. These consequences have pushed the international community to focus on economic and social issues in their programmes. In addition to the above, international conferences have been convened to discuss all the aspects relating to Human Rights. Such conferences covered a variety of issues relating to the protection and promotion of Human Rights.

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32 The First Conference was held in 1975 in Mexico City; the Second in Copenhagen Denmark) in 1980; Third in Nairobi (Kenya) in 1985 and fourth in Beijing in 1995. The above conferences dealt in depth with certain critical areas of concern which were considered as the main obstacles to women’s advancement.

2.6.3 International Conferences on Human Rights

a. International Conference on Human Rights or Tehran conference (22 April to 13th May, 1968)
c. Fourth World Conference on Women, Beijing (China) (4-15 September, 1995)


The first world-wide governmental conference known as Tehran Conference on Human Rights, popularly known as Tehran Conference, was held at Tehran (Iran) from April 22 to May 13, 1968 to review the progress made in the twenty years since the adoption of the Universal Declaration of Human Rights and to evaluate the effectiveness of methods used by the United Nations in the Human Rights field.

The conference was attended by representatives of 84 States and of United Nations organs, specialized agencies and various intergovernmental and non-governmental organizations. The conference after having recognizing that peace is the universal aspiration of mankind and that peace and justice are indispensable to the full realization of Human Rights and fundamental freedoms, proclaimed by consensus on the major Human Rights problems which is generally referred to as Proclamation of Tehran. The following are included in the Proclamation:

1. Members of the international community fulfil their solemn obligations to promote and encourage respect for Human Rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions.
2. The Universal Declaration of Human Rights stated a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community.
3. The primary aim of the United Nations in the sphere of Human Rights is the achievement by each individual of the maximum freedom and dignity. For the realization of this objective, the laws of every country should grant each
individual, irrespective of race, language, religion or political belief, freedom of expression, of information, of conscience and of religion, as well as the right to participate in the political, economic, cultural and social life of his country.

4. States should reaffirm their determination effectively to enforce the principles enshrined in the Charter of the United Nations and in other international instruments that concern Human Rights and fundamental freedoms.

5. Human Rights and fundamental freedoms are indivisible, and therefore, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of Human Rights is dependent upon sound and effective national and international policies of economic and social development;

The Conference affirmed its faith in the principles of the Universal Declaration of Human Rights and other international instruments in this field and urged all peoples and governments to dedicate themselves to the principles enshrined in the Universal Declaration of Human Rights and to redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare.


The Second World Conference on Human Rights commonly known as Vienna Conference was held at Vienna from 14 to 25 June 1993. The conference that was held 25 years after the International Conference held in Tehran had assessed the progress achieved under 1948 Universal declaration of Human Rights and laid the foundation for subsequent work in the field of Human Rights at the international level. The conference was participated by nearly 2100 delegates from 171 States, and representatives of 841 non-governmental organisations, intergovernmental organisations, specialised agencies and U.N Human Rights entities.
The Conference adopted the Vienna Declaration\textsuperscript{34} and the Programme of Action which renewed the commitment of the international community for the promotion and protection of Human Rights. Following are the main points of the Declaration:

1. \textbf{Obligations of the States:} The declaration reaffirmed the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all Human Rights and fundamental freedoms for all in accordance with the Charter of the United Nations, other instruments relating to Human Rights, and international law. Human Rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.

2. \textbf{Co-ordination of the Activities:} The promotion and protection of all Human Rights and fundamental freedoms must be considered as a priority objective of the United Nations in accordance with its purposes and principles, in particular the purpose of international cooperation. In the framework of these purposes and principles, the promotion and protection of all Human Rights is a legitimate concern of the international community. The organs and specialized agencies related to Human Rights should therefore further enhance the coordination of their activities based on the consistent and objective application of international Human Rights instruments.

3. \textbf{Universality of Human Rights:} All Human Rights are universal, indivisible and interdependent and interrelated. The international community must treat Human Rights globally in a fair and equal manner, on the same footing, and with the same emphasis.

4. \textbf{Democracy, Development and Respect for Human Rights:} Democracy, development and respect for Human Rights and fundamental freedoms are interdependent and mutually reinforcing. Democracy is based on the freely expressed will of the people to determine their own political, economic, social

\textsuperscript{34} The Conference adopted a two-part Vienna declaration and a six part 150 paragraph Programme of Action. The Declaration consisted of 16 preambular paragraphs and 39 operative paragraphs. The Programme of Action concerned increased co-ordination of human rights within the U.N System: equality, dignity and tolerance, co-operation, development and strengthening of human rights, human rights education, implementation and monitoring methods.
and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of Human Rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for Human Rights and fundamental freedoms in the entire world.

5. **Right to Development**: The Declaration affirmed right to development as a universal and inalienable right and an integral part of fundamental Human Rights. The Right to Development should be fulfilled so as to meet equitably the development and environmental needs to present and future generations.

6. **Extreme Poverty**: The existence of widespread extreme poverty inhibits the full and effective enjoyment of Human Rights; its immediate alleviation and eventual elimination must remain a high priority for the international community. It is essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, on the promotion of Human Rights and efforts to combat extreme poverty.

7. **Effective Remedies to Redress Human Rights**: The declarations stated that every State should provide an effective framework of remedies to redress Human Rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international Human Rights instruments, are essential to the full and non-discriminatory realization of Human Rights and indispensable to the process of democracy and sustainable development.

8. **External Debt Burden**: The Conference called upon the international community to make all efforts to help alleviate the external debt burden of developing countries, in order to supplement the efforts of the Governments of such countries to attain the full realization of the economic, social and cultural rights of their people.

9. **Education**: The declaration reaffirmed that States are duty-bound to ensure that education is aimed at strengthening the respect of Human Rights and fundamental freedoms. The Conference emphasized the importance of incorporating the subject of Human Rights, humanitarian law, democracy and
rule of law as subjects in the curricula of all learning institutions in formal and non-formal settings. Human Rights education should include peace, democracy, development and social justice, as set forth in international and regional Human Rights instruments, in order to achieve common understanding and awareness with a view to strengthening universal commitment to Human Rights. The World Conference recommended that States should develop specific programmes and strategies for ensuring the widest Human Rights education and the dissemination of public information, taking particular account of the Human Rights needs of women.

10. Implementation and Monitoring Methods: The world conference urged Governments to incorporate standards as contained in international Human Rights instruments in domestic legislation and to strengthen national structures, institutions and organs of society which play a role in promoting and safeguarding Human Rights.

11. Increased Co-ordination on Human Rights: The conference recommended increased co-ordination in support of Human Rights and fundamental freedoms within the United Nation’s system. To this end it urged all United Nations Organs, Bodies and the specialized Agencies whose activities deal with Human Rights to co-operate in order to strengthen, rationalize and streamline their activities, taking into account the need to avoid unnecessary duplication.

In addition to the above, the Declaration also stated for the protection of rights of the child, women, migrant workers, refugees, and of the persons belonging to ethnic, religious and linguistic minorities. The Conference also stressed the importance of strengthening the United Nations Centre for Human Rights and adoption and strengthening of United Nations machinery for Human Rights including the question of the establishment of United Nations High Commissioner for Human Rights.

The Vienna Conference has provided an invaluable service by declaring overall principles for formulating detailed recommendations for action in the field of Human Rights. The Secretary General of the United Nations has rightly stated that: “The Vienna Declaration and Programme of Action undoubtedly constituted one of
the major events in the United Nations history of Human Rights. If adequately implemented, it will be a milestone in this history\textsuperscript{35}.

c. Fourth World Conference on Women, Beijing (China) (4-15 September, 1995)

Fourth World Conference on Women was held at Beijing (China) from 4\textsuperscript{th} to 15\textsuperscript{th} September, 1995. The Beijing Conference is the fourth in a series of UN sponsored global conference on women which laid the foundation in the field of Human Rights of women who constitute nearly half of the world population. The First World Conference on Women was held in Mexico City in 1975 which highlighted the themes of “Equality, Development and Peace”. These themes were further developed during the UN Decade for Women (1976-1985). The Second World Conferences on Women was convened in Copenhagen in 1980 which added three sub-themes: “Education, Employment and Health”. The Third World Conference on Women, held in Nairobi in 1985, incorporated those themes in its forward looking Strategies for the Advancement of Women to the year 2000. The Fourth Conference was held at Beijing (China; from 4 to 15 September, 1995) carried forward the theories of “Equality, Development and Peace” which highlighted the first UN Conference on Women, held in Mexico City in 1975.

The Forward-looking strategies provided a frame work for action at all levels to promote empowerment of women and their enjoyment of Human Rights. The goals of the strategies which were intended to be implemented by the year 2000, include equal rights for women, the abolition of slavery and prostitution, establishment of a legal minimum age for marriage and punishment for female infanticide.

Moving into 21\textsuperscript{st} century, the drive for women’s rights has accelerated and taken a powerful global momentum. Within two decades, i.e. since the First World Conference on Women in Mexico City in 1975, the campaign for equality between women and men has witnessed significant changes and undeniable advances. Internationally, many treaties have been entered into and State Governments on their part have adopted various legislations. A pertinent question arises as to whether these

\textsuperscript{35} The Report of the Secretary-General of 1994 to the General Assembly on the follow-up to the World Conference on Human Rights (A/49/668)
advances have improved the everyday life of the average woman? A direct answer is not possible. Though it cannot be denied that there has been definite improvement yet millions of individual women continue to face discrimination in social, political and cultural spheres. The position is far from satisfactory. In 1993 only six women around the world headed Governments and in 1995 only 6 of the 185 ambassadors to the UN were women. In some fields the situation continues to be grim. According to an estimate, two thirds of the world’s illiterates are women and they are getting educated at a slower pace than men. On an average women’s salaries are 30 to 40 per cent lower than those of men for the same work. Half a million women dye each year from complications due to child birth, and another 100,000 from unsafe abortions. Violence against women is pervasive, from the United States where a woman is battered every 18 minutes, to India, where five women are burned in dowry-related disputes each day.

In order to assess the progress and shortfalls of the past two decades and to identify the actions to be taken into the next century, Beijing Conference or Fourth-World Conference on Women was held from 4 to 15 September, 1995. It adopted platform for action, concentrated on key issues identified the obstacles to the advancement of women throughout the world. It also determined priority actions to be taken by the international community including the UN, between 1996 and 2001 for the advancement of women. The Conference also mobilized women and men at both the policy making and gross roots levels to achieve those objectives.36

2.6.4 The Role of NGOs in the Promotion and Protection of Human Rights

Public opinion plays an important role, both nationally and internationally, in the protection of Human Rights. Even in the absence of sanctions, States show respect to Human Rights because of the realisation that their behaviours in the field of Human Rights is crucial to their reputation in world affairs. It may also affect the way they are treated in their dealings with other States in the International arena in general. The persuasive influence of Human Rights jurisprudence is directly proportional to the awareness of Human Rights in the society and the existence of a culture of Human

Rights in society. Non-governmental organisations can play a very important role in creating such awareness and a culture of Human Rights in society. NGOs can also play an important role in exposing the public view, violation of Human Rights in the states to the public. Almost all the states fear adverse publicity and consequently try to avoid their Human Rights violations being brought to the limelight by the NGOs. Many international institutions permit NGOs to make appeals to them on behalf of the victims of Human Rights abuses where the victims are incapable of doing that. The Economic and social council of the UN is competent to confer consultative status to NGOs under art 71 of the UN Charter. Many NGOs engaged in Human Rights-related activities enjoy such consultative status.

The history of Human Rights NGOs is rather long dating back to 1863 when the International council of Red Cross was established. Since then, there has been a proliferation of NGOs concerned with Human Rights. The most prominent among them are the International Jurists, Amnesty International (Art 19), Antislavery Society and the World Council of Churches. There are also regional branches of International NGOs and NGOs established at the regional or State level are also actively engaged in the promotion and protection of Human Rights.

The Characteristic feature of the developments of international Human Rights law is the fact that the relationship between the States and their own citizens are regulated through the international Human Rights conventions. No doubt, it is a desirable development, but it is equally true that these rights are guaranteed to the individuals only through the intervention of States. Thus, the position is that these Conventions, on being accepted by the States become legally binding upon them, but they do not enable the individuals to present claim against their own States for the vindication of their rights or for that matter to claim compensation. Thus, it has been suggested that such established institutions which may function judicially, assist the victims to get relief against their own States through amicable settlement.

NK Jaya Kumar, International Law and Human Rights, (2005), Lexis Nexis Butter Worths, P. 369
2.7 Indian Scenario Relating to Human Rights

Historically, recognition, protection and implementation of Human Rights in the Constitution of India has 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 are not only basic but also inalienable for them for leading a civilised life. Infact, Indians wanted the same rights and privileges that their British masters were enjoying in India. It was implicit in the birth and formation of the Indian National Congress in 1885\textsuperscript{38}.

2.7.1 Evolution of Fundamental Rights – A Replica of Human Rights

The origin and development of the Rights and Principles, the negative and positive obligations of the State towards the social revolution can be conveniently divided into two periods.

2.7.1 (a) Evolution of Fundamental Rights during Freedom Struggle

Perhaps the first explicit demand for Fundamental Rights appeared in the Constitution of India Bill, 1895\textsuperscript{39}. The Bill envisaged a Constitution for India guaranteeing the citizens freedom of expression\textsuperscript{40}, inviolability of one’s house,\textsuperscript{41} right to equality before law\textsuperscript{42}, right to property\textsuperscript{43}, right to personal liberty\textsuperscript{44} and right to free education\textsuperscript{45} etc.

A series of Congress resolutions adopted by the Congress Party between 1917 and 1919 repeated the demand for civil rights and equality of status with English men.

\textsuperscript{38} Human Rights in India – Implementation and Violations, G.S. Bajwa, Anmol Publications Pvt. Ltd, New Delhi, ed.1, 1995 p. 35
\textsuperscript{39} This draft Bill represents the first non-official attempt at drafting a Constitution for India. The Constitution of India Bill 1896; B. Shiva Rao, The Framing of India’s Constitution, Select Documents, Vol. I, The Indian Institute of Public Administration, New Delhi, 1966 pp. 5-14.
\textsuperscript{40} Art. 16 of the Constitution of India Bill, 1895.
\textsuperscript{41} Ibid Art. 17
\textsuperscript{42} Ibid Art. 20
\textsuperscript{43} Ibid Art. 23
\textsuperscript{44} Ibid Art. 19
\textsuperscript{45} Ibid Art. 25
The resolutions called for equal terms and conditions in bearing arms, for a wider application of the system of trial by jury, and for the right of Indians ‘to claim that no less than one-half the jurors should be their own countrymen’. A further resolution to this effect stated the ‘emphatic opinion’, that Parliament should pass a statute guaranteeing ‘The Civil Rights of His Majesty’s Indian subjects’, which would embody provisions establishing equality before the law, a free press, free speech, etc. The statute should, moreover, lay down that political power belonged to the Indian people in the same manner as to any other people or nation in the British Empire.

By the mid-twenties, Congress and Indian leaders generally had achieved a new consciousness of their Indianness and of the needs of the people, largely due to the experience of World War-I, to the disappointment of the Montagu-Chelmsford reforms, to Woodrow Wilson’s support for the right of self-determination, and to Gandhi’s arrival on the political scene of India. These influences reflected the tone and form of demands for the acceptance of civil rights for the Indian people. These no longer aimed at establishing the rights of Indians vis-à-vis Englishmen, a goal that was to be achieved through the Independence Movement; the purpose now was to assure liberty among Indians.

Another major development in this direction was the drafting of Mrs ‘Besant’s commonwealth of India Bill of 1925’. Art. 4 of this Bill contained a list of seven Fundamental Rights:

(a) Liberty of person and security of his dwelling and property;
(b) Freedom of conscience and the free profession and practice of religion;
(c) Free expression of opinion and the right of Assembly peaceably and without arms and of forming associations or Unions;
(d) Free elementary education;
(e) Use of roads, public places, courts of justice and the like;
(f) Equality before the law, irrespective of considerations of nationality, and;

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46 Resolution of 1917; Chakrabarty and Bhattacharya, Congress in Evolution, The Book Co., Ltd., Calcutta 1940 p. 19.
48 Ibid p.26
49 Graville Austin., The Indian Constitution- The Cornerstone of a Nation, Oxford University Press, 1966, pp 53-54
(g) Equality of the sexes.

The appointment of the Simon Commission by British Government on November 8, 1927 to undertake a study of the Constitutional Reforms in India impelled the Indian National Congress to set up a Committee to draft a Swaraj Constitution on the basis of a declaration of rights. This resolution was passed in 1927 at the 43rd Annual Session of the Indian National Congress held in Madras\textsuperscript{50}.

The Committee called for by the Madras Congress resolution came into being in May, 1928. Pt. Moti Lal Nehru was its Chairman. The Committee’s report known as ‘Nehru Report’ contained an explanation of its draft Constitution that speaks for itself. The Fundamental Rights incorporated in the Nehru Report were reminiscent of those of the American and post-war European Constitution, and were in several cases taken forward from the rights listed in the Commonwealth of India Bill, 1925\textsuperscript{51}.

The Nehru report declared that the first concern of Indians was, ‘to secure the Fundamental Rights’, that have been denied to them. In writing a Constitution, the report continued:

“\textit{It is obvious that our first care should be to have our Fundamental Rights guaranteed in a manner which will not permit their withdrawal under any circumstances}\textsuperscript{52}…”

The Indian Statutory Commission 1930 did not support the general demand for the enumeration and guaranteeing of Fundamental Rights. Sir John Simon in his report observed:

“\textit{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

\textsuperscript{50} Resolution of 1917; Chakrabarty and Bhattacharya, Congress in Evolution, The Book Co., Ltd., Calcutta 1940 p. 27.
\textsuperscript{51} G. Austin Op. cit. p. 55
\textsuperscript{52} Ibid
value. Abstract declarations are useless, unless there exist the will and the means to make them effective”53.

Another landmark in the development of the recognition of Fundamental Rights was the Karachi Resolution adopted by the Congress Session held in March, 1931. It held that ‘in order to end the exploitation of the masses, political freedom must include the real economic freedom of the starving millions’54.

The demand for a declaration of Fundamental Rights in Constitutional document was again emphasised by several Indian Leaders at the ‘Round Table Conference’ prior to the making of Government of India Act, 1935. In all the three Sessions of this Conference, discussions were held on the subject of inclusion of Fundamental Rights in the proposed Constitution Act. The Sub-Committee on minorities held detailed discussion on the subject and at the first meeting of the sub-Committee held on December 23, 1930, Raja Narendra Nath pointed out the need to make the question of declaration of rights un-assessable by the majority in the Constitution of India55.

K.T. Paul also emphasised the need for the inclusion of Fundamental Rights and to provide for a machinery to ensure that they were not violated. He asserted that there should be in the statute some declaration of Fundamental Rights as in the case of those Constitutions which have been framed subsequent to the war.

B. Shiva Rao, a representative of the Labour Organisation of India to the Round Table Conference placed before the Minorities SubCommittee meeting on December 23, 1930, a comprehensive enunciation of a draft declaration of fundamental rights56.

During the discussion at the sub-Committee meeting Dr. B.R. Ambedkar also pointed out the need for the inclusion of Sections in the Constitution for the enforcement of Fundamental Rights including a right of redress in case of their

54 Chakrabarty and Bhattacharya, Op. cit., p. 28
55 Indian Round Table Conference proceedings of the Sub-Committee No. III Minorities, London 1930.
56 Ibid
violation. The Secretary of State for India submitted a report to parliament after the Round Table conference was over.

The report observed that the Government recognises the importance attached by the leaders to the idea of making a chapter on fundamental rights, a feature in the new Indian Constitution. It also pointed out some of the propositions discussed at the conference could find their place in the Constitution.

The joint select Committee of 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 British subjects in India. Expressing its agreement with the view of Simon Commission, the Committee observed:

“…there are also strong practical arguments against the proposal, which may be put in the form of dilemma; for either the declaration of rights is of so abstract in nature that it has no legal effect of any kind of its legal effect will be to impose on embarrassing restrictions on the power of the legislature and to create a grave risk that the a large number of laws may be declared invalid by the courts because inconsistent with one or other of the rights so declared.

However, this did not dampen the enthusiasm of Indians to have a list of Fundamental Rights incorporated in their Constitution. Indians rejected the British view of rights for many reasons. Foremost among them was the belief that independence meant liberty and the rights expressing this liberty both in their positive and negative forms must be enshrined in the Constitution. The desire for written rights was reinforced by the suspicion of Government engendered by colonial rule – a suspicion that was certainly not diminished by the scoffing attitude of the imperial government toward such rights. During the years when independence had been more of a hope than a reality, the Congress had been loud in demanding written rights. With independence and the Congress’s assumption of power near, to reject them would

have created a vast and crippling suspicion of the Congress leaders’ motives. The party leadership, aware of this, was eager to demonstrate its good intentions\(^{58}\).

The decade of 1940’s was generally marked by a resurgence of interest in Human Rights. The denial of liberties under German and Russian totalitarianism and elsewhere resulted in the Atlantic Charter, the United Nations Charter, and the activities of the United Nations Human Rights Commission. Assembly members were sensitive to these political currents, which invigorated their own faith in the validity of written rights in the Constitution for the Indian people\(^{59}\).

That the Constitution would contain positive rights as well as negative safeguards was nearly as certain as the appearance of the written rights themselves. For as the inclusion of negative rights was primarily a product of the national revolution and of the minorities situation, so the impetus for the inclusion of the state’s positive obligations came largely from the social revolution and reflected the social consciousness that had increasingly characterized the twentieth century both in India and abroad\(^{60}\).

The further stage of the development of Fundamental Rights in India was ‘Sapru Committee Report’, published at the end of 1945. This Committee was appointed by an ‘All Parties Conference in 1944-45’ with Sir Tej Bahadur Sapru as its Chairman. Sapru Report gave a standing warning to all that what the Constitution demands and expects is perfect equality between one section of the community and another in the matter of political and civil rights, equality of liberty and security in the enjoyment of the freedom of religion, work ship, and the pursuit of the ordinary applications of life\(^{61}\).

The British Cabinet Mission in 1946 recognised the need for a written guarantee of Fundamental Rights in the Constitution of India in paragraph 19 and 20 of its statement of May 16, 1946, envisaging a Constituent Assembly for framing the

\(^{59}\) Ibid p. 59
\(^{60}\) Ibid
\(^{61}\) Sir Tej Bahadur Sapru and others, Constitutional Proposals of the Sapru Committee, the Sapru Report, p. 260.
Constitution of India. It recommended the setting up of an Advisory Committee for reporting to the Assembly inter-alia on Fundamental Rights. The increased demand for self-determination was supported by India’s war-augmented power, many among men had been trained and armed, and the people had a new, stronger sense of unity coincided with a marked decrease in the British force in India, occupied as they were with Palestine and other problems abroad and war-weariness at home. It was in this atmosphere that the newly elected Labour Government in England announced in September 1945 that it was contemplating on the creation of a Constituent Body in India and ordered that national elections be held during the winter so that freshly created Provincial Legislatures would be ready to act as electoral bodies for a Constituent Assembly. Followed by this move, British government in January 1946 sent a Parliamentary Delegation to India and in the month of March Cabinet Mission came to India. This Cabinet Mission was assigned a difficult task of assisting the Viceroy in setting up the machinery by which Indians can devise their own Constitution and of mediating between the Congress and the Muslim League in order to find a middle ground upon which the communities of India could be Constitutionally untied.

There had always been conflicts of interest between Muslims and Hindus. Mr. Mohammmed Ali Jinnah channelised Muslim dissatisfaction through Muslim League and propagated two-nation theory- the theory that Muslims were culturally as well as religiously a group apart, that they were neither Hindus nor Indians and that they must seek their fulfilment in a state of their own. But the view point of the Congress was the reverse to the view-point of Muslim League. The Congress was emphatic that the people of India were Indians no matter whatever their religion, they were one nation. But the three members of the Cabinet Mission hoped to reconcile both the groups by a compromise plan by dividing India into three provinces on geographical basis. One province would be predominantly Muslim, one predominantly Hindu and in the third the population of the two communities would be nearly equal. Therefore, India was to remain one state but the power of the Central Government would be confined to

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foreign affairs, communication and defence. Both Congress and Muslim League accepted this plan unwillingly.

The Constituent Assembly was formulated by electing its members by provincial legislatures. The provinces were to be represented in the Assembly in the approximate ratio of one to one million of their population. The members of three communal categories in the legislatures, Muslim, Sikh and General (Hindu and all other communities) would elect separately, according to their percentage of the province’s population, their proportion of the provincial delegation. The princely states were to have ninety three representatives in the Assembly, but the method of selecting them was left to the consultation between the Assembly and the State’s rulers.

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 obtain their cooperation in forming an Interim Government envisaged in the Cabinet Mission plan. The viceroy Wavell tried his level best for reconciliation. Meanwhile, the Congress went ahead with its plans for the Constituent Assembly, appointing an Experts Committee to draft Fundamental Rights and to arrange for the early session. Therefore, the Congress, at the Viceroy’s invitation, formed the Interim Government. Pandit Nehru was appointed as Vice-president of the Viceroy’s Executive Council, or defacto Prime Minister. The League continued to ignore the Assembly but later on joined the Interim Government. The meeting of the Assembly was convened on December 9, 1946 but Muslim League boycotted it. On June 3, 1947 Lord Mountbatten, Viceroy announced that on 15 August England would recognise the existence of two independent states on the sub-continent, India and Pakistan. Accordingly, the Indian Independence Act passed by the British parliament came into force on 15 August 1947, giving legality to the Constituent Assembly the status it had assumed since its formation.

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63 M. Gwyer, Maurice and Appadorai Op. cit., pp 577-84
64 The Indian Independence Act made Constituent Assembly as the Constituent Assembly (Legislative) the Dominion Parliament.
2.7.1 (b) Fundamental Rights And Constituent Assembly

The Working Committee of the Congress drew up a resolution establishing the Advisory Committee at its meeting of 8 December 1946 as was suggested by Cabinet Mission plan. The resolution to form an Advisory Committee was to be moved at the first session of the Assembly but it was delayed for a month in the hope that the Muslim League might enter the constituent Assembly. Therefore, the first meeting of India’s Constituent Assembly in New Delhi, on 9th December, 1946, was the fulfilment of a long cherished hope for many of its 296 members. The business before the meeting was purely formal. But the meeting symbolised an event of unique significance, namely, the commencement of a great task of framing free India’s Constitution without outside interference or pressure.

On 24th January 1947, the Constituent Assembly voted to form the Advisory Committee. It was originally to have been elected by the Assembly, but the Congress leadership argued that the members be chosen in off-the-floor conferences held between Assembly leaders and the chief members of each minority group. Sardar Patel became the Chairman of the Advisory Committee. The duty of this Committee was to report to the Assembly on the list of Fundamental Rights, the clauses for the protection of minorities etc. Advisory Committee in turn set up five Sub-Committees out of which one was the Sub-Committee on Fundamental Rights. Acharya Kripalani became the Chairman of this Sub-Committee.

When the Fundamental Rights Sub-Committee met for the first time on 27 February 1947, it had before it draft list of rights prepared by B.N.Rau, K.T.Shah, K.M.Munshi, B.R. Ambedkar, Harnam Singh and the Congress Expert Committee, as well as miscellaneous notes and memoranda, on various aspects of rights. These lists, sometimes annotated or accompanied by explanatory memoranda were lengthy and detailed and contained both negative and positive rights taken from foreign Constitutions and from the Indian documents of rights referred above. The

65 Other members of the Fundamental Rights Sub-Committee were: Raj Kumari Amrit Kaur, Hansa Mehta, Minoo Masani, K.T. Shah, A.K. Ayyar, K.M Munish, Sardar Harnam Singh, Maulana Azad, B.R. Ambedkar, J. Daulat Ram, and K.M. Panikkar. K.T. shah and K.M. Munshi were familiar with formal consideration of rights issue because both these have members of the Congress Experts Committee, which had drafted a list of rights for the Assembly’s guidance. Dr. B.R Ambedkar had attended the Round Table Conference and taken a strong interest in rights issues.
Fundamental Rights sub-Committee was faced with a problem of balancing the individual liberty vis-à-vis social control. The former is necessary for fulfilment of individual’s personality and the latter for the peace and stability of our society. The members found that, although there was some disagreement on technique, there was little difference on principles. The members of the sub-Committee quickly decided that the Fundamental Rights should be justifiable, that they should be included in the Constitution, and they decided on what form these rights should take in the Constitution. The Rights to freedom were drafted with only brief argument over the wording of the proviso to the Right of Freedom of Association. The Sub-Committee also adopted provisions abolishing Untouchability, protection against jeopardy, ex-post facto laws, very quickly. The framing of rules such as Equality before law, the right freely practice religion and the protection of minorities was the other landmark work of Sub-Committee.

After making the Fundamental Rights justifiable, the Committee included within the Rights the legal methods by which they could be secured. To do this, they adopted the English device of prerogative writs, or directions in the form of writs. Munshi, Ambedkar and Ayyar strongly and actively favoured the inclusion of the right to Constitutional remedies and the other members of the sub-Committee agreed with them. Sardar Patel, chairman of the Advisory Committee, presented the Committee’s Interim Report on Rights to the Assembly on 29 April 1947, the second day of the third session; Assembly received this report with great favour. As many as 189 amendments were proposed and a few were accepted but the content of rights and basic principles remained intact. No doubt, that the rights to be included in the Constitution were considered to be fundamental and enforceable by court but they could not be absolute. It was decided that right and by providing for the rights to be suspended in certain circumstances. Accordingly individual liberty, equality, basic freedoms etc. were passed with certain limitations. Therefore, Assembly passed Fundamental Rights which are divided into seven parts having close resemblance with Human Rights enshrined in various international Human Rights documents as part III of the Constitution.
2.7.2 Directive Principles of State Policy and Constituent Assembly

The Fundamental Rights and Directive Principles had their roots deep in the freedom struggle. They were included in the Constitution in the hope and expectation that one day the tree of true liberty would bloom in India. The Rights and Principles thus connect India’s future, present and past, adding greatly to the significance of their inclusion in the Constitution, and giving strength to the pursuit of the social revolution in India. The state is to apply the precepts contained in the Directive Principles when making laws. The Directive Principles aim at making the Indian masses free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from the abject physical conditions that had prevented them from fulfilling their best selves.

At the first stage in the framing of the principles, the Fundamental Rights. Sub-Committee approved the wide accepted device of precepts and the sentiments expressed by them. The main supporters were B.N. Rau, Ayyar, Ambedkar and K.T. Shah. Actually Munshi, Ambedkar and Shah were in favour of a more vigorous social programme. They were of the opinion that there must be a specified time limit within which all the Directive Principles must be made justifiable.

The second stage took place on the floor of the Assembly in November and December 1948 during the debate on the Draft Constitution. The Assembly’s reaction to the principles revealed two types opinion. Firstly that the Directives did not go far enough towards establishing a socialist state and secondly, that they should have placed greater emphasis on certain institutions and principles central to Indian practice and to Hindu thought, particularly those glorified by Gandhi’s teaching. These two reactions resulted in a number of amendments proposed to these Principles.

The majority of the amendments were for development of village life and economy and the panchayat system of village organisation. Some members of the Assembly sought to make the promotion of cottage industry a government responsibility to make it incumbent upon the government to prevent the slaughter of

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67 Ibid. p. 51
cattle and to improve the methods of animal husbandry and agriculture. Other amendments called for the nationalisation of various organisations. Most of these amendments were voted down or withdrawn by their initiators. Therefore, the Directive Principles of state policy were adopted as part-IV of the Indian Constitution by the Assembly.

2.7.3. Statutory Protection of Human Rights in India

The protection of Human Rights was further ensured by the enactment of the Protection of Human Rights Act, 1993. The Act established the National Human Rights Commission, State Human Rights Commissions, and Human Rights Courts for protection of Human Rights\(^{68}\).

The National Commission is empowered to inquire into and investigate complaints of Human Rights violations and recommend appropriate relief measures to the Government. At the state level, similar functions are entrusted to State Commissions. The Human Rights Courts are established for trial of offences in connection with Human Rights violation. The term ‘Human Rights’ is defined in Section 2(d) of the Act, to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India”.

This definition has been intentionally made expansive enough to accommodate within its ambit, all Human Rights known, recognised and protected, all over the civilised world. In addition to the protection of Human Rights Act, 1993, there are certain legislations directly or indirectly rendering a signal service for the promotion and protection of Human Rights\(^{69}\).

\(^{68}\) It is enacted by the parliament in the forty fourth year of the Republic of India. This Act consists of 43 sections divided into 8 chapters. This Act was enacted in the context of International covenant on Civil and Political rights and the International covenant on Economic, Social and Cultural rights. In accordance to the provisions of the Act, it is the duty of the central government of India and the states to establish Human Rights Commissions and the Human Rights Courts independently for the better protection and promotion of human rights. The Government of India in accordance with the provision of the Act in the year 1994 constituted a National Human Rights Commission empowering it to deal with the violations of human rights.

\(^{69}\) The most important among them are

(i) The Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989;
(ii) The Protection of Civil Rights Act 1955;
(iii) The National Commission for Minorities Act, 1992;
(iv) The National Commission for Women Act, 1990;
(v) The National Commission for Safaikarmacharis Act, 1993;
(vi) The persons with Disabilities (Equal Opportunities, Protection of Rights and Full participation) Act 1995;
(vii) The protection of women from Domestic violence Act, 2005;
(viii) The Displaced persons (Compensation and Rehabilitation) Act 1954;
(ix) The commissioner for protection of Child Rights Act, 2005;
(x) The Juvenile justice (Care and Protection of Children) Act 2000;
(xi) The Child marriage Restraint Act of 1929;
(xii) The Immoral Traffic (Prevention) Act of 1956;
(xiii) The Indecent representation of women (Prohibition) Act 1986;
(xiv) The Dowry prohibition Act, 1961;
(xv) The Medical termination of Pregnancy Act 1971;
(xvi) The Prenatal Diagnostic techniques (Regulation and Prevention of Misuse) Act, 1994;
(xvii) The Mental Health Act 1987;
(xviii) The National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1994;
(xviii) The Rehabilitation Council of India Act, 1992;
(xix) The Environment (Protection) Act, 1986;
(xx) The Bonded Labour System (Abolition) Act, 1976;
(xxi) The Child labour (Prohibition and Regulation) Act, 1986;
(xxii) The Contract Labour (Regulation and Abolition) Act, 1970;
(xxiii) The Maternity Benefit Act, 1961;
(xxiv) The Equal Remuneration Act 1976;
(xxv) The Employees State Insurance Act, 1948;
(xxvi) The Minimum Wages Act, 1948;
(xxvii) The Payment of Wages Act, 1936;
(xxviii) The Workmen Compensation Act1923;
(xxiv) The Employees Provident Fund and Miscellaneous Provisions Act, 1952;
(xxv) The Apprentices Act, 1961;
(xxvi) The Trade Unions Act 1926;
(xxvii) The Industrial Employment (Standing orders) Act, 1946;
(xxviii) The Motor Transport Workers Act, 1961;
(xxvix) The Mines Act 1952;
(xxx) The Merchant Shipping Act, 1958;
(xxxi) The Children (Pledging of Labour) Act, 1933;
(xxxii) The Factories Act of 1948;
The recognition and protection of Human Rights is nothing but the acknowledgement of the dignity of the human race, and are designed to enable each human individual to lead a life of fulfilment and achieve the maximum potential of the talents imbued by nature upon that individual.

It is by the faithful and unstinted enforcement of these rights that civilization of the world can truly qualify to be called human civilisations, bereft of barbarism, cruelty and conduct shocking to the human conscience. It would also be the best guarantee to humankind against looming spectres of holocausts, genocides, violent conflicts and mindless annihilation of the human race in the name of wars. If peace of body, mind, and spirit be the ultimate objective of the human beings, protection of Human Rights is the categorical imperative of modern life.

2.8 Summary

The close examination of above stated historical facts/events at International and national levels bear testimony to the belief that man’s struggle for rights is as old as the history of mankind. This concept of Human Rights was in rudimentary form in the ancient times, in formative stage in the Middle Ages and fully grown in the 20th century with the formation of United Nations.

The UDHR was adopted by the UN General Assembly on 10th December, 1948. The declaration was, however of great importance in stimulating and directing the International promotion of Human Rights. It formulates a unitary and universally valid concept of what values all states should cherish within their own domestic orders. Together with it, the two International Human Rights covenants namely the International Covenant on Civil and Political Rights, 1966 and the International

(xxxiii) The Beedi and Cigar Workers (Conditions of Employment) Act 1966;
(xxiv) The Industrial Disputes Act, 1947;
(xxxvi) The Commission of Sati (Prevention) Act, 1987;
Covenant on Economic, Social and Cultural Rights, 1966 have given a very wide connotation to the concept of Human Rights and Fundamental Freedoms. At the Universal and the Regional level a host of specific treaties on Human Rights was hammered out.

International conferences on Human Rights have also been arranged from time to time to discuss various issues of Human Rights issues relating to minorities, racial discrimination, crime, population, development and torture and many more. These conferences have pushed the International community to focus on economic and social issues in their programmes. So far as the protection and promotion of Human Rights are concerned the NGOs have rendered signal services since 1863 when the International Counsel of Red Cross was established.

It is also clear that, in India, the movement for the protection of Human Rights started during British rule. Indian people demanded these rights from British Government. After independence, Fundamental Rights are incorporated in part-III of the Indian Constitution which bears close resemblance with Human Rights. In accordance with the mandate of International Covenants on Human Rights as well as the provisions of the Indian Constitution the government had enacted the protection of Human Rights Act 1993 to provide for the Constitution of National Human Rights Commission, State Human Rights Commissions in the States and Human Rights Courts at district level for better protection of Human Rights and for matters connected therewith or incidental thereto.

In addition to the protection of Human Rights Act, 1993 there are certain legislations which directly or indirectly protect the Human Rights and Fundamental Freedoms of mankind in multidimensional approach. All these are in accordance with the mandate of Human Rights instruments as well as in accordance with the Constitutional provisions.