

GRADUAL DEVELOPMENT OF HUMAN RIGHTS JURISPRUDENCE

IRFAN RASOOL*

INTRODUCTION:

The concept of inalienable rights of human beings, as it appears, is often articulated by poets, philosophers who tried to define and limit them in their writings and through open discussions.

The revolutionary happenings of the times of *Magna Carta* and after sowed and fertilized the idea of human rights. Propelled of many reasons, the religious, economic and political in particular during Middle Ages helped people to reach a common consciousness and to break the chains of slavery and political absolutism and seek the equality of human beings and the universality of human rights. These exercises, however, have been milestones in the development, promotion and protection of human rights at national levels only. And it is the last half of 20th Century that may be fairly said to mark the era of development of human rights at international level with the establishment of United Nations in 1945 and the subsequent declarations and conventions passed by the General Assembly on emerging issues, have played a distinctive and valuable role in achieving human rights objectives. Modest attempts were made and addressed at international level to deal with some pressing human right issues as well as those, likely to scourge, as this decade unfolds.

Historical and Conceptual Reflections of Human Rights:

The failure¹ of the power-holder² to respect the principles of freedom³, equality⁴ and justice⁵ which had been central to natural law philosophy⁶ almost from the beginning played a key role in

* FACULTY ASSOCIATE, FACULTY OF LAW, IFHE, HYDERABAD

¹ For details on the concept of power and its exercise see Karl Lowenstein, *POLITICAL POWER AND THE GOVERNMENTAL PROCESS*, (1965).

² The law and the power are inter-related and to understand the efficiency of any law it becomes important to quantify power, (the degree to which it can be exercised) which establishes that law. According to Julius Stone, there are six aspects of power relations in terms of degrees, which can be represented on its own spectrum. (a) Coercion spectrum, (b) Time spectrum, (c) Ethical spectrum, (d) Influence spectrum, (e) Interest spectrum and (f) Head count spectrum. For details, refer to Julius Stone, *SOCIAL DIMENSIONS OF LAW AND JUSTICE*, (1999).

³ G. W. F. Hegel on 'freedom' in his work *Philosophy of Right* writes, the state is the actuality of concrete freedom. However, concrete freedom consists in this: that personal individuality and its particular interests not only achieve

their complete development and gain explicit recognition for their rights..., but, for one thing, they also pass over of their own accord into the interest of the universal, and for another thing, they know and will the universal. For subsequent inquiry see HEGEL'S PHILOSOPHY OF RIGHT, (T. M. Knox tr., with notes 1942).

⁴ A synthesis of the concept of equality transcends as an organic development, systemized in its growth from time to time, through an array of jurisprudential consciousness.

An important element in the concept of natural law was the principle of equality. The stoic philosophers were convinced that man were essentially equal and that discrimination between them on account of sex, class, race, or nationality were unjust and contrary to the law of nature. The stoic idea of human equality gained some ground in the political philosophy and jurisprudence of the Roman Empire. Naturally, the influence of Stoic philosophy was merely one element among others that contributed to the tendency toward a somewhat greater social equality, which was noticeable in the post Augustan period. See Bodenheimer, Edgar, JURISPRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW, 16 (Third Indian Reprint, 2001).

It is pertinent to mention that the development of the concept of natural law is attributable to Stoic philosophers and the foundation of the Stoic school of philosophy was laid by Zeno.

⁵ The most important question that remains in any philosophical survey on the concept of law is the means of attaining and delivering 'justice'.

Socrates, Cephalus and Polemarchus on the concept of justice: the definition of justice given by Cephalus, in a text, *The Republic*, with a discussion between him and Socrates was as consisting of speaking truth and paying ones' debts. A slightly modified definition was provided by Cephalus's son Polemarchus as, justice meant giving each man his dues or what is proper to him, which he qualified to doing good to friends and harm to enemies. Socrates dismissed both the definition on the grounds, among others, that speaking truth sometimes might result in harm and person could make mistakes about one's friends or enemies. Socrates, however, did not disapprove the concept, but only its application. For subsequent inquiry see Plato, *THE REPUBLIC*, Bk I (A D Lindsay tr., 1950.). See also A. Bloom, *THE REPUBLIC OF PLATO*, (1968) See also Bodenheimer, Edgar, JURISPRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW, 6 (Third Indian Reprint, 2001). See also Mukherjee, Subrate and Ramaswamy, Sushila, *A HISTORY OF POLITICAL THOUGHT: PLATO TO MARX*, 66, 67 (2007). See also Suda *et al* *A HISTORY OF POLITICAL THOUGHT: ANCIENT AND MEDIEVAL THOUGHT*, Vol I, 27-41 (9th edn., 1973).

Socrates and Thrasymachus on concept of justice: Thrasymachus, a Sophist, defined justice as the interest of the stronger party, the ruler and contended that rulers can not do any wrong and if so, they no longer remain the rulers.

Each type of government enacts laws that are in its own interest, a democracy democratic laws, a tyranny tyrannical ones and so on; and in enacting these laws they make it quite plain that what is "right" for their subject is what is in the interest of themselves, the rulers, and if anyone deviates from this he is punished as a law breaker and "wrongdoer". That is what I mean when I say that "right" is the same thing in all states, namely the interest the established government; and the government is the strongest element in each state, and if so we argue correctly we see that "right" is always the same, the interest of the stronger party. See Plato, *THE REPUBLIC*, 78 (1955).

See also Winspear, A. D., *THE GENESIS OF PLATO'S THOUGHT* (1940).

This defensive statement to define the concept of justice was indeed a response to the Socrates objection to the fact that rulers may not be able to identify the interests for their subjects and accordingly defeating their own interest. This concept of justice resembles to what was defined by Hobbes and Spinoza later.

Plato on the concept of justice: The book. *The Republic*, apart from discussing the fundamental questions like, what constitutes a state? What are the principles upon which society should be organized if individual citizens are to obtain happiness and the state stability, was centralized on the meaning of the term 'justice' or right conduct or morality. See Suda *et al* *A HISTORY OF POLITICAL THOUGHT: ANCIENT AND MEDIEVAL THOUGHT*, Vol I, 37 (9th edn., 1973). See also Subrate Mukherjee, and Sushila Ramaswamy, *A HISTORY OF POLITICAL THOUGHT: PLATO TO MARX*, 53 (9th edn., 2007). See also E. Barker, *GREEK POLITICAL THEORY: PLATO AND HIS PREDECESSORS* (1964).

Aristotle on the concept of justice: Justice, to Aristotle, was a complete virtue and he distinguished it between distributive and corrective justice. By distributive justice he meant distribution of material things among the citizens according the principles of proportionate equality. (The Directive Principle of State Policy of Indian Constitution, particularly Articles 38 and 39 sounds to be based on the similar principle). In his opinion justice consists in some

the struggles against political absolutism⁷. When the resistance to religious intolerance and political-economic bondage began, the long held liberal notions of freedom and equality, particularly in relation of the use and ownership of property prompted man to claim rights. The situation changed with the dawn of renaissance which inundated Europe with testimony to the increasing view that human beings are endowed with certain eternal and inalienable rights. The result was that King John was forced to sign the *Magna Carta* (The Great Charter of English Liberty⁸) at Runnymede on June 15, 1215. In the modern world the first claim for human rights can be said to begin with the *Magna Carta*⁹, which made it mandatory for the King to rule in a fair manner and protect the barons from unfair treatment from the government. It laid the foundation of liberties. Its famous clause 39 reads:

sort of equality. See Aristotle, *THE POLITICS*, (E, Barker tr., 1979). See also Aristotle, *THE NICOMACHEAN ETHICS* (H. Rackham H tr., 1934).

Herbert Spencer on the concept of justice: Spencer preferred to link the idea of justice to freedom rather than to equality and the only limitation he recognized was self imposition. For details see Herbert Spencer, *Justice*, (New York: 1891, p. 46)

See contra Bodenheimer, Edgar, *JURISPRUDENCE: THE PHILOSOPHY AND METHOD OF THE LAW*, 140 (Third Indian Reprint, 2001). "But justice is rather vague and indeterminate concept. It demands that those who are equal be treated in an equal manner, while those who are different be treated differently according to their differences. This general maxim leaves open two questions: first, the test by which the equality and inequality is measured, and second, the particular mode of treatment to which both equals and unequal's are to be subjected."

⁶ In philosophy, the development of notion of natural rights of man was contributed by the Stoic philosophers. They first developed natural law theory and by virtue of it they explained the nature of human rights, that is, the rights every human being possesses by virtue of being human. The idea of justice, at an early stage in Greek philosophy, was a guiding principle not only for the behavior of the individual, but also for the organization of society. Gurjeet Singh, and Dinesh Kumar, *Human Rights: A Historical Perspective*, 31(01) INDIAN SCIO- LEGAL JOURNAL, 25, 36 (2005).

⁷ See contra Thomas Hobbes' *Leviathan* which was a defense of absolute monarchy. Absolute monarchy meant complete freedom of political action to establish a mechanism against any possible intervention in sovereignty and according to Hobbes, absolute power ensure complete order and converse, a chaos. For subsequent inquiry see T. Hobbes, *LEVIATHAN*, (R. Tuck ed., 1991). See also See K. R Minogue, *Thomas Hobbes And The Philosophy Of Absolutism* in *POLITICAL IDEAS*, 61, 61-65 (David Thomas ed., 1966).

For Aristotle, monarchy was a true form of government. See Aristotle, *THE POLITICS*, Bk I (E Barker tr., 1979). See also Aristotle, *THE NICOMACHEAN ETHICS*, (W. D. Ross ed., 1962)

On the contrary, John Locke looked at political absolutism as illegitimate, a worst political sin. For subsequent inquiry see Locke, J., *TWO TREATIES OF CIVIL GOVERNMENT*, (P. Laslett ed., 1960). See also W J Gough, *JOHN LOCKE'S POLITICAL PHILOSOPHY* (1950).

⁸ See contra V R Krishna Iyer, *THE DIALECTICS AND DYNAMICS OF HUMAN RIGHTS IN INDIA: YESTERDAY, TODAY AND TOMORROW*, 106, 107 (Reprint 2000). "...It is doubtful if he could ever write. There is no evidence that he could..."

⁹ But in the early history of criminal law, it can be contended that the criminal law marked the very beginning of the protection of the human rights. However when the state while working the criminal justice system was felt to be oppressive, claims against the state power begin.

No freeman shall be taken, or imprisoned, or diseized, or outlawed, or exiled, or in any way harmed--nor will we go upon or send upon him--save by the lawful judgment of his peers or by the law of the land.¹⁰

The *Magna Carta* was followed by the Petition¹¹ of Rights¹² in 1628. Article 1 of the Petition of Rights¹³ declared that loans to the King cannot be compelled and no taxes can be levied without the permission of parliament. They were to be illegal. Article 2 declared that all arbitrary imprisonment without cause was illegal and Article 4 of the Petition forbade the billeting of soldiers in private houses¹⁴.

The Petition of Rights was forward by the Habeas Corpus Act, 1679¹⁵. The Habeas Corpus Act was officially titled as an “Act for better securing the liberties of the subjects, and for prevention of imprisonment beyond the seas.” By this provision protection of the freedoms of the people of the country was sought to be ensured¹⁶.

¹⁰ The guarantee of freedom in clause 39 read with guarantee of impartial and prompt delivery of justice under clause 40 of *Magna Carta* have influenced human rights jurisprudence ever sense.

¹¹ A petition moved by Sir Edward Coke in the Parliament against Charles I for levying unjust taxes, turned to be called Petition of Rights.

¹² See contra Thomas Hobbe’s views in his translation of Thucydides (1628), who warned people to rely on democracy and to show any disaffection with the established government, because for him absolute power meant complete order, and converse, a chaos. This turned to be true with the beginning of year 1640, with protracted civil war and the decapitation of Charles I and stringent puritan rule under Cromwell.

¹³ The Petition of Rights is a celebrated document drawn up by the English House of Commons in 1628, setting forth grievances against King Charles I. The Petition of Rights was a parliamentary declaration in which freedom of people was dealt with for example; that nobody shall be indebted nor taxed without the permission of parliament and nobody shall be imprisoned in an arbitrary way. For subsequent inquiry see the text of the *Petition of Rights*.

Lord Denning on the Petition of Rights in his work *What Next in Law* writes:

Coke while he was Chief Justice of the King’s Bench stood up against the pretensions of the King. So he was dismissed from his office. After his dismissal he became a member of Parliament and advocated the liberty of the subject with an energy which was surprising in a man of his age for he was seventy six when he succeeded in carrying the famous Petition of Right in 1628. He overcame by his arguments and perseverance all the objections and impediments raised against it.

Lord Denning, *WHAT NEXT IN LAW*, 11(Indian Reprint 1982).

¹⁴ This served to protect the privacy of home.

¹⁵ The Habeas Corpus Act of 1679 was the most critical statute regulating the use of the great writ in Britain. The following two aspects of this Act are of paramount importance: (1) The writ would be available to anyone in official custody unless that custody was the result of valid warrant of commitment or of valid conviction of a crime. It is important to note that the validity of either a warrant or a judgment of conviction was subject to a very limited inquiry, that is, whether the body issuing the warrant or rendering the judgment lacked jurisdiction. (2) Even when there was a valid order of commitment before trial on a criminal charge, the court could direct the release of the prisoner on the bail unless the accused was indicated and tried within a specified time. Gurjeet, *Supra* note 6, at 39.

¹⁶ *Ibid*.

The Habeas Corpus Act was followed by the Bill of Rights¹⁷ or Declaration of Rights¹⁸, 1689. These Acts¹⁹ are regarded as landmarks in the constitutional developments in England for limiting the power of the king and safeguarding certain rights of the people²⁰.

The Declaration²¹ of Independence of the thirteen United States of America²² in 1776, and the fundamental rights to 'person', 'property' and enforcement of the 'promise' are often mentioned as the three P's used in the Declaration²³. The Declaration unanimously stated that all men are

¹⁷ The Bill of Rights was the product of struggle against tyranny.

While Locke was in exile, the Catholic James II succeeded Charles II on the throne of England. His rule proved every bit as bad as Shaftesbury said it would be. James II tried to impose the Catholic faith of Englishmen, he dispensed with the Parliament and he took away many of the ordinary citizen's ancient rights and privileges. In the end, he drove the nation so hard that the English rose in arms to expel him from the throne, and to set up a Protestant constitutional monarch in his place. This was the 'Glorious Revolution' of 1688 which put King William and Queen Mary on the throne. See Cranston Maurice, *John Locke and Government by Consent in Political Ideas*, 73 (David Thomas ed., 1966).

William and Mary were to ascend the throne on condition of their acceptance of the Bill of Rights, which was drawn up and passed through Parliament in 1689 and completed the work which *Magna Carta* had begun.

¹⁸ The philosophy of John Locke and the traditions of Glorious Revolution of 1688, with its Act of Settlement and Bill of Rights paved the way for human rights thinking even in the monarchy. See Krishna, *Supra* note 8, at 109

¹⁹ Lord Denning quotes Macaulay while expressing the significance of the Bill of Rights in his work *What Next in Law* as:

The Declaration of Rights, though it made nothing law which had not been law before, contained the germ of the law which gave religious freedom to the Dissenter, of the law which secured the independence of the judges, of the law which limited the duration of the Parliament, of the law which placed the liberty of the press under the protection of juries, of the law which prohibited the slave trade, of the law which abolished the sacramental test, of the law which reformed the Roman Catholics from civil disabilities, of the law which reformed the representative system, of every good law which has been passed during more than a century and a half, of every good law which may hereafter, in the course of ages, be found necessary to promote the public weal, and to satisfy the demands of public opinion."

Denning, *Supra* note 13, at 274.

²⁰ It declared to be illegal: a) the pretended power of the Crown to suspend laws; b) the power of dispensing with laws as it hath been exercised of late by the Crown; c) the existence of the court of High Commission and similar courts. Secondly, parliament was to be freely elected, to have freedom of speech and to meet frequently, and there was to be no taxation without its consent. Gurjit, *Supra* note 6, at 39. See also Mukherjee, *Supra* note 5, at 191

²¹ The Declaration of Independence was an Act by which the American Congress, on 4th July 1776, declared the American colonies to be independent of Great Britain. Krishna, *Supra* note 8, at 68

²² Jefferson's formulation of the Declaration of Independence against the British Emperor is illuminating: "He has waged cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere, or to incur miserable death in their transportation thither. This practical warfare, the opprobrium of infidel powers, is the warfare of the Christian king of Great Britain. Determined to keep open a market where Men should be bought and sold, he has prostituted his negative for suppressing every legislative attempt to prohibit or to restrain this execrable commerce; and that this assemblage of horrors might want no fact of distinguished die, he is now exciting these very people to rise in arms among us, and to purchase that liberty of which he deprived them, by murdering the people upon whom he also obtruded them; thus paying off former crimes committed against the liberties of one people, with crimes which he agrees them to commit against the lives of another".

²³ Thomas Jefferson gave poetic eloquence to the plain prose of the 17th century in the Declaration of Independence proclaimed by the 13 American Colonies on July 4, 1776: "*We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life,*

created equal²⁴ and unalienable Rights including rights to Life, Liberty and the pursuit of Happiness. It claimed a right of the People to alter or to abolish a government²⁵ which was destructive of the three 'P's in the Declaration and to organize the powers of government so as was most likely to affect their Safety and Happiness.

The French Revolution²⁶ was the result of economic and social inequalities and injustices of the ancient regime of France²⁷. The French Declaration²⁸ of the Rights of Man and of the Citizen of August 26, 1789 resolved to hold the existence of human rights to be self evident, declaring that all men are created equal. The Declaration in its Article 1 stated:

“Men are born and remain free and equal in rights. Social distinctions can be based only upon public utility.”

Liberty and the Pursuit of Happiness.” Weston Burns, H., *Human Right*, 06 HUMAN RIGHTS QUARTERLY, 257, 260 (1984)

²⁴ The declaration of Independence was an upsurge against oppression and for the salvation of human rights. A fight for self-determination. This declaration affirmed human rights in classic diction, by holding that all men are created equal.

²⁵ “... That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such a form, as to them shall seem most likely to effect their Safety and Happiness... when long trains of abuses and usurpations, pursuing invariably the same object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security”.. Krishna, *Supra* note 8, at 69

²⁶ ... the French Revolution where the people suffered so much that food riots broke out and the absolutism of the Monarch was challenged by the people's collective might in assertion of human rights... it did mark a milestone in the angry march of the world's masses in their hunger for human rights. The Revolution declared France a Republic... Krishna, *Supra* note 8, at 72, 73

²⁷ Tom Paine's second major work *The Rights of Man* was a vindication of French Revolution.

²⁸ “Many people who have heard of this Declaration think that its author was Tom Paine, and that he proclaimed it. In fact, of course, it was made by the National Assembly of France in 1789. In this book Paine was its translator and champion. But in reality he was rather more than that...”

He quotes the first four clauses of the French Declaration in his own translation, again and again-

First: Men are born, and always continue, free and equal in respect of their rights. Civil distinctions, therefore, can be founded only on public utility...

Second: The end of all political associations is the preservation of natural and imprescriptible rights of man. These rights are Liberty, Property, security, and the right to resist oppression...

Third: the Nation is essentially the source of all sovereignty; nor can any individual, or any body of men, be entitled to any authority that is not expressly derived from it...

Fourth: Political Liberty consists in the power of doing whatever does not injure another. The exercise of natural rights of every man has no other limits than those which are necessary to secure to every *other* man the free exercise of the same rights. And those limits are determinable only by the law”. . See J Hampden Jackson, *Tom Paine and the Rights of Man* in POLITICAL IDEAS 112, 113(David Thomas ed., 1966).

The French Declaration²⁹ not only set out a number of human rights, but also included resistance to oppression as a right³⁰.

These exercises have been milestones in the development, promotion and protection of human rights at national levels only. However, it is the last half of 20th Century that may be fairly said to mark the era of development of human rights at international level.

The first international documentary expression of Human Rights can be found in the Charter of the 'United Nations'³¹ (UN) adopted immediately after World War II at the San Francisco Conference on June 25th, 1945. The Charter³², a multilateral treaty, for the first time used the word "We the peoples of the United Nations" and accorded a tacit recognition of the individual human beings who had suffered the sorrows and sufferings of two World Wars³³. The Charter in its Preamble purported to show that the United Nations Organization has been created by individuals. The UN Charter in its Preamble expresses the determination of the Organization to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small³⁴. Article 1 state among its objectives:

²⁹ The Declaration of Rights was a declaration of duties, in effect also. Whatever consists of my liberty to be was to the extent not to infringe similar liberty to every other man.

³⁰ Insisting that "men are born and remain free equal in rights," the declaration proclaims that "the aim of every political association is the preservation of the natural and imprescriptible rights of men," identifies these rights as "Liberty, Property, Safety, and Resistance to oppression," and defines "liberty" so as to include the right to free speech, freedom of association, religious freedom, and freedom from arbitrary arrest and confinement. Weston, *Supra* note 23, at 257, 260.

³¹ "THE FINEST HOUR of humanity's modern history of human rights dawned when, overpowering Hitler's hordes and Nipponese hounds and their harshest and the most horrendous savageries, fifty progressive, peace-seeking leaders of the planet adopted and signed on 26th June 1945 in San Francisco the Charter which founded the United Nations, the hollowed heaven of the peoples of the earth". Krishna, *Supra* note 8, at 139.

³² The representatives of France, the Soviet Union, the united States, the United Kingdom and China drafted the Charter in 1944 on the basis of proposal worked out at Dumbarton Oaks Estate, Washington.

³³ ... not even the basic recognition of human beings with inalienable rights as the subject of the deep concern and non-negotiable reverence- this poignant feeling persuaded the staggering statesmen of the earth to agree solemnly in the city of San Francisco to the Charter of the United Nations and establish an organization to be known as United Nations. The dignity and the worth of the human persons in the first charge on this world body... the repository of human rights to protect, preserve and promote which is a paramount function of the United Nations. Krishna, *Supra* note 8, at 140.

³⁴ After World War II, the UNO was formed and the charter of the declaration of human rights was signed by its member nations. The United Nation Charter is pervaded by the deep attachment of human rights. The aim of the Charter is to save the humanity from the scourge of war and the complete development of human personality, his liberties and the scope for the same..... The preamble of the Charter in its first paragraph laid down that "We the people of the United Nations determined to reaffirm faith in the fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..." Dr Raj Pal Sharma, *Human Rights-An Overview*, 1 (08) ALL INDIA REPORTER 228-29.

...achievement of international cooperation in solving international problems of an economic, social and cultural or humanitarian character and in promoting and enlarging respect of human rights and for fundamental freedoms for all without discrimination as to race, sex, language or religion.

The Charter of the United Nations brought two significant changes with regard to human rights. Firstly, the promotion and protection of human rights, which was formally vested in nation states, was made a matter of international concern. Secondly, the individual became the subject of the international law rather than the object of international law³⁵. It incorporated specific provisions for the protection of human rights³⁶.

The efforts of the United Nations Charter relating to promotion of human rights and fundamental freedoms opened a new dimension towards the progressive development, promotion, protection as well as universal recognition of human rights. In furtherance to this object, the General Assembly adopted the Universal Declaration of Human Rights (UDHR) on 10th December, 1948³⁷.

The UDHR contains thirty Articles enumerated as General (Article 1-2) Civil and Political rights (Article 3-21)³⁸ and Economic, Social and Cultural rights (22-27)³⁹ and concluding (Articles 28-30). The rights enunciated therein are regarded as the basic postulates and principles for human rights, and as foundations for justice, freedom and equality in the world and the recognition of

³⁵ Thomas Roy Kadichini, *Enforcing Human Rights in India*, 25 (1-4) COCHIN UNIVERSITY LAW REVIEW, 363, 364 (2001).

³⁶ Article 55 of the United Nations Charter reads: With a view to the creation of the conditions of stability and well-being which are necessary for the peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a). higher standard of living, full employment, and conditions of economic and social progress and development; b). solutions of international economic, social, health, and related problems; and international culture and educational co-operation; and c). universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

³⁷ Universal Declaration of Human Rights adopted and proclaimed by the General Assembly Resolution 217 A (III) of 10th December 1948.

³⁸ The first generation of civil and political rights derives primarily from the 17th and 18th –century reformist theories, which are associated with the English, American, and French revolutions. Infused with the political philosophy of liberal individualism and the economic and social doctrine of laissez- faire, it conceives of human rights more in negative (“freedom from”) than positive (“right to”) terms; it favours the abstention rather than the intervention of government in the quest of human dignity, as epitomized by the statement attributed to H. L. Mencken that “... all government is, against liberty.” Weston *Supra* note 23, at 257, 260.

³⁹ The second generation of economic social and cultural rights finds its origin primarily in the socialist tradition that was foreshadowed among the Saint-Simonians of early 19th century France and variously promoted by the revolutionary struggles and the welfare movements ever since. In large part, it is a response to the abuses and misuses of capitalist development and its underlying, essentially uncritical, conception of individual liberty that tolerated, even legitimated, the exploitation of working classes and colonial people. Weston *Supra* note 23, at 265. However, the classification of human rights into first, second, and third generation is not acceptable for such classification tends to imply that one human right is substantially annihilated by another human right, which is in contrast to the human rights culture and defies moral values.

the dignity of the individual. The UDHR significantly begins with a declaration that all human beings are born free and equal both in dignity.

The Preamble to the UDHR simply proclaims the declaration:

...as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedom and progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of members states themselves and among the peoples of territories under their jurisdiction.”

The first generation rights set forth in Article 2-21 in the Universal Declaration of Human Rights includes freedom from racial and equivalent forms of discrimination; the right to life, liberty, and security of the person; freedom from slavery or involuntary servitude; freedom from torture and cruel inhuman or degrading treatment or punishment; freedom from arbitrary arrest detention, or exile; the right to fair and public trial; freedom from interference in privacy and correspondence; freedom of movement and residence; the right to asylum from persecution; freedom of thought, conscience and religion; freedom of opinion and expression; freedom of peaceful assembly and association; the right to participate in the government. The second generation of rights set forth in Articles 22-27 are such as the right to social security; the right to work and to the protection against unemployment; right to remuneration; the right to a standard of living adequate for health and well being of self and family; the right to education available to all on the basis of merit. These rights and freedoms are to be subject only to such limitations as are determined by law for the purpose solely for securing due recognition and respect for rights of others and morality and public order in general. The Declaration requires that no state, group or person can claim any right to do anything in the destruction of these rights and freedoms.⁴⁰ However the UDHR is only a declaration and not a treaty, and serves to proclaim a common standard of achievement rather than set enforceable legal obligations.

The importance of the Declaration Human Rights does not decrease due to their inoperativeness in a state, having no binding effect, but has left a profound influence upon the minds of men and statesmen, to take major steps for the better protection and promotion of human rights. After the adoption of the UDHR, major international conventions have been promulgated to prohibit all forms of discriminations, to protect and promote human rights and to prevent the infringement thereof. For the purpose of the implementation of the aspirations stated in the Declaration, 1948, the UDHR has acted as a catalyst for producing in 1966, two other cornerstones of modern human rights law, the International Covenant on Civil and Political Rights (ICCPR)⁴¹ and the International Covenant on Economic, Social, and Cultural Rights (ICESCR)⁴². These two Covenants elaborate on the rights, the claims set forth in the Universal Declaration.

⁴⁰ For further details see Article 30 of the Universal Declaration of Human Rights, 1948.

⁴¹ Opened for signature Dec.10, 1966, entered into force Mar.23, 1976. India acceded on 10th April 1979.

⁴² Opened for signature Dec.19, 1966, entered into force Jan.23, 1976. India acceded on 10th April 1979.

The ICCPR includes almost all those rights proclaimed as civil and political rights in the UDHR, excepting those contained in Articles 14, 15(1) and 16(1)⁴³. The Covenant asserts right to life; right against slavery, the slave trade and forced labour; prohibits arbitrary arrest or detention; and guarantees that no one shall be imprisoned merely for inability to fulfill contractual obligation; the right to liberty of movement and the freedom to leave any country, including once own and states that no one shall be deprived of the right to enter his own country, sets limitation on the expulsion of aliens lawfully in their country, provides for equality before the courts and tribunals; prohibits retroactive criminal legislation, stipulates the right of every one to recognition every where as a person before the law, prohibits arbitrary or unlawful interference with privacy, guarantees the right to freedom of thought, conscience and religion; and the right to freedom of opinion and expression. The covenant also elaborates on rights not enumerated in UDHR such as the right of all peoples to self determinations and right to ethnic, religious, or linguistic minorities to enjoy their own culture, to profess and practice their own religion, and to use their own language, including the right of people freely to dispose of their natural wealth and resources⁴⁴.

The ICESCR elaborates upon most of the economic, social, and cultural rights set forth in the UDHR, including the right to work, the right to just and favorable conditions of work; the right to social security; right relating to the protection of the family; the right to an adequate standards of living; the right to health; the right to education; the right to form and join trade unions; the right to social security including the social insurance; the right to the highest standard of physical and mental health; and to participation in the cultural life and to enjoyment of the benefits of the scientific progress⁴⁵.

Some of the other important Resolutions, Declarations, Conventions by the General Assembly which compelled the state parties to recognize the inherent dignity, equality and inalienability of rights of all members of the human family as the foundation of freedom, justices and peace in the world could be summarized as follows:

Declaration on the Right to Development:

Among the objectives of the Charter of the United Nations is achievement of international cooperation in solving problems of economic, social, cultural or humanitarian nature, and in promoting and encouraging respect for human rights and fundamental freedoms. Development is the comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well being of the entire population and of all individuals which allows a person to live a life with human dignity. The fair distribution of the benefits, efforts to establish a new international economic order promotes and protects human rights. Keeping this in view

⁴³ For further details see the text of the Universal Declaration of Human Rights, 1948. Available at <http://www.un.org/en/documents/udhr> (Accessed 2nd May 2009).

⁴⁴ For subsequent inquiry see the text of the International Covenant on Civil and Political Rights, 1966, available at <http://www1.umn.edu/humanrts/instree/b3ccpr.htm> (Accessed on 2nd May 2009).

⁴⁵ For subsequent inquiry see the text of the International Covenant on Economic, Social and Cultural Rights, 1966, available at http://www.unhchr.ch/html/menu3/b/a_cescr.htm (Accessed on 2nd May 2009).

the General Assembly adopted the Declaration on the Right to Development. Article 1 of the Declaration states:

The right to development is an inalienable human right by virtue of which every human person and all people are entitled to participate in, contribute to, and enjoy economic, cultural and political development, in which all human rights and fundamental freedoms can be fully realized⁴⁶.

Human rights are perceived as composite and indivisible and the Right to Development underscores the economic basis for enjoyment of human rights. However, as a Declaration, it does not set down legally enforceable standards.

The United Nations Declaration on the Elimination of All Forms of Racial Discrimination:

The United Nations Declaration on the Elimination of All Forms of Racial Discrimination is a follow up on rights declared in the Article 1 of the UDHR and aims to reinforce the dignity of human being. Article 1 of this Declaration states that:

Discrimination between human beings on the ground of race, color, or ethnic origin is an offence to human dignity...⁴⁷

Declaration on the Elimination of Discrimination against Women:

The Declaration on the Elimination of Discrimination against Women is similarly a follow up on the rights proclaimed in the Preamble to the Charter of the United Nations, Articles 1, 2 7, and 16 of the UDHR, Article 2(2) of ICCPR and Article 2(2) of the ICESCR all of which assert the principle of non discrimination⁴⁸. Article 1 of the Declaration states:

Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity⁴⁹.

This again does not set legally enforceable standards, being only a Declaration, but would serve to indicate the desired ethical content of any law.

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

⁴⁶ Adopted by the General Assembly Resolution 41/128 of December 1986. For subsequent inquiry see the text of the *Declaration* available at http://www.unhchr.ch/html/menu3/b/a_ceschr.ht (Accessed on 2nd May 2009).

⁴⁷ Proclaimed by the General Assembly Resolution 19049(XVII) of 20 November 1963. For subsequent inquiry see the text of the *Declaration* available at <http://www.unhchr.ch/html/menu3/b/9.htm> (Accessed on 24 May 2009).

⁴⁸ Proclaimed by the General Assembly Resolution 2263 (XXII) of 20 November 1963. For subsequent inquiry see the text of the *Declaration* available at <http://www.unhchr.ch/html/menu3/b/21.htm> (Accessed on 2nd May 2009).

⁴⁹ *Ibid.*

The disregard of the rights of freedom of thought, conscience, religion or belief has brought great sufferings to the mankind and resulted in the infringement of human rights. It was realized as important to essentially promote understanding, tolerance and respect in matters relating to freedom of religion and belief. Religion or belief is one of the fundamental elements in the man's conception of life and the freedom of religion or belief should be fully respected and guaranteed. Keeping the principles of the Universal Declaration of Human Rights, International Covenants in mind the General Assembly proclaimed Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief⁵⁰. Article 1 of the Declaration proclaims:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practices and teaching.

The non-binding nature of the Declaration does not however whittle down its ethical content.

Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment:

One of the essential functions of the State is to maintain law and order and the dignity of its citizens, to promote universal respect for, and observance of, human rights and fundamental freedoms. However as expressed in Article 5 of the Universal Declaration of Human Rights⁵¹, Article 7 of the International Covenant on Civil and Political Rights⁵² states are obliged to ensure that its people are not subjected to torture, or cruel and degrading treatment or punishment. The General Assembly considering all these principles adopted the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁵³. The Declaration serves the purpose of solemn affirmation of state policy, although it does not lay down legally enforceable standards.

Declaration on the Human Rights of Individuals who Are not Nationals of the Country in which They Live:

The concern for of human rights and fundamental freedom for individuals who are not nationals of the country in which they live found expression because any discrimination between nationals and non nationals of country would result in denial of equality before law and equal protection of laws, contrary to the basic principle of human rights, and the postulates of the UDHR that

⁵⁰ Proclaimed by the General Assembly resolution 36/55 on 25 November 1981. For subsequent inquiry see the text of the *Declaration* available at http://www.unhcr.ch/html/menu3/b/d_intole.h (Accessed on 2nd May 2009).

⁵¹ No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

⁵² No one shall be subjected to torture or to cruel, in human or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

⁵³ For subsequent inquiry see the text of the *Declaration* available at <http://www1.umn.edu/humanrts/instree/h2catoc.htm> (Accessed on 2nd May 2009).

everyone has the right to recognition everywhere as a person before the law, that all are equal before the law and entitled without any discrimination to equal protection of laws. The Declaration on the Human Rights of Individuals who Are not Nationals of the Country in which They Live⁵⁴ was a reinforcement of the principles of equality before law and the equal protection of laws. This requirement is articulated in Article 2 of the ICCPR as a legal standard.

The Convention on the Rights of the Child:

The Convention on the Rights of the Child⁵⁵ is a follow up measure to reinforce the inherent dignity and of the equal and inalienable rights of all members of human family as recognized by the Preamble to the UN Charter and reaffirmed Article 24 of the ICCPR and Article 10 of the ICESCR.

CONCLUSION:

The international efforts have played a distinctive and valuable role in human rights areas in relation to the operations, promotion and protection of human rights. In 1945, the United Nation Charter and the subsequent declarations like, Universal Declaration of Human Rights, first attempt to specify the long felt aspirations of the people concerning the promotion and protection of fundamental freedoms and the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights were two other cornerstones of modern human rights law. Freedom and dignity for each human being have come to be accepted as constituting essential values which every State should try to protect, regardless of considerations of nationality, sex, race, religion etc. These international instruments have strengthened, linked and generated a much wider awareness in the matter of promotion and protection of human rights and have influenced the nations in building up domestic systems to achieve human rights objectives. Globalization of human rights even if have reached the dominant pattern in respect that the States sign treaties, in fact have no intention to shape their policies and restructure their power, States pay lip services to it⁵⁶, and people have become indifferent so much so that they have reached a saturation point.

⁵⁴ For subsequent inquiry see the text of the *Declaration* available at http://www.unhcr.ch/html/menu3/b/o_nonnat.htm (Accessed on 2nd May 2009).

⁵⁵ Adopted by the General Assembly resolution 44/25 of 20 November 1989. For subsequent inquiry see the text of the *Declaration* available at <http://www.unhcr.ch/html/menu3/b/k2crc.htm> (Accessed on 2nd May 2009).

⁵⁶ For certainly the implementation of any International Treaty/Law depends solely upon the will of the States, itself. See for details H L A Hart, *CONCEPT OF LAW* (1961).

It may be for this reason that States were and are reluctant to join the United Nations subject to the reservation on Articles 55 and 56 of the United Nations Charter.