## CHAPTER I

### INTRODUCTION

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1.1 Introduction

"Every State is known by the rights that it maintains. Our method of judging its character lies, above all in the contribution that it makes to the substance of man's happiness."¹

'Human Rights' is a twentieth century term for what had been traditionally known as "Natural Rights" or, in a more appealing phrase, the "Rights of Man." The notion of "Rights of Man" and other such concepts of human rights are as old as humanity. "These rights of men had a place almost in all the ancient societies of the world, though they were not referred to by that name."² 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 Massachusetts of 1780, the Declaration of Independence of 1776; the Bill of Rights in the form of the first ten amendments to the Constitution of America and 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 expressly acknowledged the inherent rights of man.³ It is a general belief that the concept of human rights is Western and that the origin of the concept of human rights in world history found its first expression in the "Magna Carta" of 1215 followed by the Petition of Rights of 1628, the Bill of Rights of 1688, the American Bill of Rights of 1791 and the French Declaration of the Rights of Man of 1789.

Democracy, which entered the vocabulary of the English language in the sixteenth century, had its birth way back in Athens some 2500 years ago. Official respect for freedom was sanctified (in the Western heritage) by the 1688 English Bill of Rights. It is interesting to note that prior to the use of the term "Human Rights," such rights were typically called the
Rights of Man or Natural Rights. Thomas Paine, who coined the expression "human rights" in his English translation of the French Declaration of the Rights of Man and the Citizen (1789), wrote his classic book on human rights in 1792 titled The Rights of Man. In the same year, for the first time in recorded history, Mary Wollstonecraft argued for equal rights for women in her equally classic book A Vindication of the Rights of Woman. Eleanor Roosevelt suggested the change of name from "Rights of Man" to "Human Rights" in 1947. This term has since been universally accepted, beginning with the Universal Declaration of Human Rights, which the General Assembly had passed on 10th December 1948.

1.2 **Meaning of Rights**

Rights are those conditions of social life without which man cannot be at his best. They are essential for the full development and expression of his personality. A right is a claim recognised by society and enforced by the State. Rights are the external conditions necessary for the greatest possible development of the capabilities of an individual.

1.3 **Meaning of Human Rights**

Human beings are rational. By virtue of being human, they possess certain basic and inalienable rights, commonly known as human rights. They become operative with their birth. Human rights, being the birthright, are therefore inherent in all human beings irrespective of their caste, creed, religion, sex and nationality. Human rights are also sometimes referred to as fundamental rights, 'basic rights', 'inherent rights', 'natural rights' and 'birth rights'. 'Human rights' is a generic term, which embraces 'civil rights', civil liberties, and 'social, economic and cultural rights'. The idea of human rights is bound up with the idea of human dignity. Thus all those rights, which are essential for the maintenance of human dignity, are called
human rights. These rights are essential for all individuals as they are consonant with their freedom and dignity and are conducive to their physical, moral, social and spiritual welfare. Human rights include those areas of individual or group – freedom that are immune from Governmental interference because of their basic contribution to human dignity or welfare and are subject to Governmental guarantee, protection or promotion.

D.D. Basu defines human rights as "those minimum rights, which every individual must have against the State or other public authority by virtue of his being a member of human family, irrespective of any other consideration."4

Justice V.R. Krishna Iyer writes:

Human rights are those irreducible minima, which belong to every member of the human race when pitted against the State or other public authorities or group or gangs and other oppressive communities. Being a member of the human family, he has the right to be treated as human, once he takes birth or is alive in the womb with a potential title to personhood.5

Durgadas Basu referring to natural laws observes:

Western scholars date the genesis of this ideal of natural law to Sophocles more than 400 years before Christ.

In England, the case for a natural law, superior to man-made law, was argued by Blackstone in the 17th century.

Once the concept of a higher law binding on human authorities was evolved, it came to be asserted that there were certain rights anterior to society, which too were superior to rights created by the human authorities which were of universal application to men of all ages and all climes, and were supposed to have existed even before the birth of political society. These rights could not, therefore, be violated by the State.6
1.4 Statement of the Problem

Human rights have a special significance in the changing world scenario, especially in the Post World War democratic era. The Post World War era has witnessed the rapid development of human rights culture. The General Assembly of the United Nations unanimously adopted The Universal Declaration of Human Rights on December 10, 1948. India enacted the Protection of Human Rights Act in the year 1993. The Kerala State Human Rights Commission was established on 11th December 1998 under Section 21 of the Protection of Human Rights Act, 1993 to protect human rights in Kerala. Hence this study is titled as “Human Rights in India: With Special reference to the Role of the Kerala State Human Rights Commission.” This study analyzes the importance of human rights in India and the role of the Kerala State Human Rights Commission for the protection of human rights.

1.5 Objectives of the Study

The history of mankind has been firmly associated with the struggle of individuals against injustice, exploitation and disdain. The assertion of human rights is one of the remarkable manifestations of this struggle.

The domain of human rights is ever expanding in India. Many laws, institutions and organisations have been enacted and established to ensure our citizens a better standard of human rights. The Indian Parliament enacted the Protection of Human Rights Act in the year 1993 with a view to protecting the basic rights of the Indian people, and the Kerala State Human Rights Commission was set up on 11th December 1998.

In this study the researcher makes an earnest attempt to assess and evaluate the rights and liberties granted in the Constitution and tries to make a realistic evaluation of the functioning of the Kerala State Human Rights Commission.
The objectives of the present study are:

1. To study historically the evolution of the basic international human rights law.
2. To analyze the human rights provisions of basic human rights documents.
3. To study the historical foundations of human rights in India.
4. To examine various provisions relating to human rights in the Indian Constitution.
5. To evaluate the role of Indian Judiciary and the National Human Rights Commission for the protection of human rights.
6. To study the origin, development, role, functions and activities of the Kerala State Human Rights Commission.
7. To evaluate the inherent weaknesses of the Kerala State Human Rights Commission and to propose some positive suggestions for effecting improvement.

1.6 Hypotheses

The major hypotheses guiding this investigation are:

1. In modern times human rights are regarded as the most important rights.
2. The United Nations provide a good background for the development of human rights.
3. Human rights are found in the ancient Indian thought.
4. The Indian Constitution itself contains ample provisions for the protection of human rights.
5. The Protection of Human Rights Act 1993 and the Constitution of National Human Rights Commission encourage protection of human rights. However, N.H.R.C. is a weak body that suffers from inherent weaknesses.
6. The Judiciary in India has expanded the scope of Article 21 of the Constitution - "No person shall be deprived of his life or personal liberty except according to the procedure established by law."

7. The Supreme Court is the most important protector of human rights in India.


9. The Kerala State Human Rights Commission is a weak and powerless body that suffers from manifold inherent procedural and structural weaknesses.

1.7 Methodology

The methodology followed in this study is not uni-dimensional. It is rather a blend of the historical, theoretical and practical aspects of human rights. A historical approach has been followed for the study of the origin and development of human rights in the world scenario as well as in India. In analysing the judicial behaviour of the Supreme Court and the State High Courts as well as the role and function of the National and State Human Rights Commissions, the methodology adopted is analytical. This study seeks to understand and evaluate the roles, powers, and the functioning of the Kerala State Human Rights Commission. The data have been obtained through personal interviews with the Chairperson, the members and the Secretary of the Kerala State Human Rights Commission, present as well as former.
1.8 **Sources of Information**

The pieces of information pertaining to the study have been gathered from primary and secondary sources.

**Primary sources**

1. The Universal Declaration of Human Rights
2. The International Covenant on Civil and Political Rights
3. The International Covenant on Economic, Social and Cultural Rights
4. The Constitution of India
5. The Protection of Human Rights Act, 1993
6. The decisions and judgements of the Supreme Court and State High Courts
7. Annual Reports and Orders of the National Human Rights Commission and the Kerala State Human Rights Commission
8. Personal interviews

**Secondary sources**

1. Published works on human rights
2. Reports of newspapers and journals
3. Lectures by eminent jurists

1.9 **Period of Study**

The Government of Kerala constituted the Kerala State Human Rights Commission on 11th December 1998. But the Commission commenced its function only in 1999. This study covers a period of 5 years from 1999 to
2004. Since the Commission was set up in the year 1998, the period is structured within the framework of 5 years.

1.10 Significance of the Study

Human rights become operative with the birth of individuals, irrespective of their caste, creed, religion, sex or nationality. The Protection of Human Rights Act enacted in 1993 set up a National Human Rights Commission and State Human Rights Commissions. The Government of Kerala set up the Kerala State Human Rights Commission on 11th December 1998. The Kerala State Human Rights Commission has investigated a number of serious cases of human rights violations including custodial deaths, Police violence against civilians, torture and other cruel inhuman or degrading treatment, custodial rape, disappearance from custody, and atrocities against vulnerable sections of the society such as women, children and the disabled. It has submitted reports to the Government suggesting measures to be taken to curb human rights violations.

The enactment of the Protection of Human Rights Act of 1993 and the constitution of the Kerala State Human Rights Commission in 1998 by the Government of Kerala gave new dimensions to the protection of human rights in Kerala. Hitherto, not many relevant studies have been undertaken in this direction, particularly regarding the role and functioning of the Kerala State Human Rights Commission. Hence this study assumes particular significance.

1.11 Universe of the Study

The study could cover the entire world as 'human rights' is one of the widely discussed concepts of modern times and it has assumed special significance in the changing global scenario. However, it is nearly
impossible to conduct such an exhaustive study within a stipulated time. Hence, the researcher has limited the study to the issue of Human Rights in India in general and the role of the Kerala State Human Rights Commission in particular.

1.12 Limitations of the Study

The study focuses on human rights and the Kerala State Human Rights Commission. The researcher attaches great importance to documents, reports, periodicals, personal interviews, judgements and decisions of the Courts and Commissions and the reports of the National and State Human Rights Commissions. The lack of access to original sources sometimes is a hindrance to an impartial analysis. One of the main constraints faced by the researcher was the absence of published annual reports of the K.S.H.R.C.

1.13 Review of Literature

An attempt is made in this section to review the available literature on human rights with a view to examining the different standpoints and views adopted by various thinkers and experts. In as much as a comprehensive analysis of all the literature relating to the topic is neither essential nor requisite, only the relevant contributions are briefly presented.

B.N. Rau's *India's Constitution in the Making* (1960) contains all the relevant debates and deliberations that took place on the floor of the Constituent Assembly of India on the desirability of the adoption of fundamental rights in the present Constitution. This book closely analyses the events that led to the change of the phrase "Procedure Established by Law" in place of "Due Process of Law."

Prof. A.V. Dicey in his famous work, *The Law of the Constitution* (1961) gives a narrow meaning to the concept of personal liberty. He also explains the implications and ramifications of "Rule of Law" as applied in the United Kingdom.

D.D Basu, a legal luminary, in his book *Commentary on the Constitution of India in Ten Volumes* (1965) gives a systematic exegesis of all the provisions of the Indian Constitution including chapter III that deals with fundamental rights. Besides, he gives a comparative analysis of the constitutional framework of the contemporary political systems.

Jagadish Swarup in his book, *Human Rights and Fundamental Freedoms* (1975) sums up individual rights in retrospect. He explains how right to liberty was engendered by the right to the security of a person. The right to privacy against searches and privacy in marital relationship are elaborated in this book.

*Constitutional Government in India* (1977) by M.V. Pylee discusses the main factors responsible for the incorporation of fundamental rights in the Indian Constitution starting from the Constituent Assembly debates. It also refers to various judgements of Indian Courts.

Subhash C. Kashyap in his book entitled *Human Rights and Parliament* (1978) seeks to clarify the meaning, scope and ramifications of
the concept of human rights in India and the role that Parliament played in safeguarding them. This work throws much light on the working of the Parliamentary form of Government but it places less emphasis on the implementation of the concept of rights.

T.S. Batra in his study *Human Rights - A Critique* (1979) articulates his concern about the violations of human rights. He explains how on the one hand human rights are proclaimed to be inviolable and on the other hand how human beings seeking such rights are tortured, killed and even burnt alive. This book is highly useful in identifying the areas of violations of human rights.

B.G. Ramacharan (ed) *Human Rights: Thirty Years After the Universal Declaration* (1981) is an interesting collection of enlightening essays reviewing the progress of human rights in the 30 years following the adoption of the Universal Declaration of Human Rights in 1948. The author also makes some seminal suggestions for further development.

Dr. H.O. Agarwal in an earlier book entitled, *Implementation of Human Rights Covenants* (1983) examines the international standard for the protection of human rights and then compares them with that of Indian standards. Besides this, it also lists those rights which are made available to the citizens of India by a latitudinarian interpretation of Article 21 which otherwise are not specifically mentioned in the Constitution.

R.C. Hingorani's work *Human Rights in India* (1985) shows how far international human rights are observed in the Indian context. This book classifies rights into five categories i.e. civil, political, economic, social and cultural rights. However, it is not an in-depth study of the implementation of human rights in India because it ignores judicial activism in this field.

Attar Chand's book, *Politics of Human Rights and Civil Liberties* (1985) is an important work that enumerates the various rights guaranteed in the contemporary political systems of the world. A close study of this book enables us to correctly assess the possibility of the realization of those rights in the Indian context.

Shashi P. Misra's *Fundamental Rights and the Supreme Court* (1985) is a pioneer attempt in the study of judicial behaviour as an integral part of the political process in India. The greatness of this book rests on the fact that the norms evolved by the Supreme Court to operationalize the concept of reasonableness have been identified from the plethora of judicial decisions on fundamental rights.

A.R. Desai's (ed) *VIolation of Democratic Rights in India* (1986) exhaustively discusses how far the people of India enjoy the fundamental rights guaranteed by the Indian Constitution. He examines in detail some of the selected reports and documents, which give authentic accounts of the attacks by the guardians of the law by way of Police atrocities, encounter deaths, deliberate murders and torture inflicted on the people. This book provides a myriad of useful data relating to the violations of the right to life in India.

an insight into the problems involved in the enforcement of human rights in India.

Freed Kazmi in his book, *Human Rights and Reality* (1987) makes an attempt to demystify the numerous myths that have been woven around the concept of human rights. He redefines the concept of human rights as a means for the promotion of the happiness of the people of India.

Upendra Baxi’s (ed) *The Right To Be Human* (1987) is a collection of articles, which indicate that new rights arise from the matrix of the old. Now the sphere of the ideas, values and thoughts associated with human rights is ever widening and covers new areas. The main emphasis of the book is on human rights of the child, the mentally challenged and the beggars.


S.N. Sharma in *Personal Liberty Under Indian Constitution* (1990) provides an empirical and analytical study of the social perception of the context and extent of personal liberty in the light of recent judicial policy of liberal interpretation. It also seeks to correlate the personal liberty decisions and maintenance of law and order. This book has greatly helped the researcher formulate new dimensions of personal liberty in the present research.

The main emphasis of K.L. Bhatia’s (ed) *Judicial Activism and Social Change* (1990) is on the impact of judicial activism on socio-economic change. Section III namely “Civil Liberties and Judicial Activism,” is
particularly pertinent to the present thesis dealing as it does with the effect of judicial activism on fundamental rights.

Nisha Jaswal in her book, *Role of the Supreme Court with Regard to the Right of Life and Personal Liberty* (1990), closely examines Article 21 of the Indian Constitution in the light of recent judicial decisions. She also highlights some of the important aspects of the right to life and personal liberty such as the validity and desirability of capital punishment, right to legal aid and right to protection against exploitation.

P.L. Metha and Neena Varma in their book *Human Rights under the Indian Constitution, the Philosophy and Judicial Jerrymandering* (1999) focus attention on the origin and development of human rights jurisprudence since Pre-Vedic times with special emphasis on its vicissitudes during different periods. The book also discusses the various constitutional provisions meant to provide human rights to the people of India.

Justice V.R Krishna Iyer, the Indian legal luminary on Human Rights, in his classical text *The Dialectics and Dynamics of Human Rights in India: (Yesterday Today and Tomorrow)* (1999) which is an anthology of lectures delivered by him at the Calcutta University directs a sharp focus on India's human rights odyssey from the jurisprudential perspective and presents with his erudition and scholarship a learned discourse on the emergence, dimension and development of human rights and the realities confronting those rights in a vibrant and inimitable style. The learned author in these lectures also makes a detailed study of the concept and origin of human rights and their relationship with religious culture and the foundation and structures of the United Nations and the International Covenants. This book has enormously helped the researcher to formulate new dimensions of human rights in the present research.
N. Jayapalan's book *Human Rights* (2000) is undoubtedly a very useful and handy collection of international treatises on human rights. It gives a graphic picture of the Indian Constitutional guarantees of these rights in part III and part IV in a lucid language.

Dr. S.K. Kapoor in his book *Human Rights Under International Law and Indian Law* (2001) explains the origin, growth and development of human rights, the Universal Declaration of Human Rights and Regional Protection of Human Rights from a historical perspective. It also deals with the Indian Human Rights Protection Act 1993, protection of human rights under the Indian law and the role of the National Human Rights Commission. This work is a blend of stimulating scholarship and sparkling style.

D.N. Gupta and Chandrachur Singh in their book, *Human Rights, Acts, Statutes and Constitutional Provisions* (2003) focus attention on the Acts, Statutes and Constitutional provisions which are concerned with environmental issues, protection of the rights of the Indian citizen vis-à-vis the illegal migrants, the rights of the disabled persons, juveniles, prisoners, criminals, citizens', right to information and many other important subjects connected with human rights. In this study an attempt has been made to place before all concerned the basic Acts, Statutes and Constitutional provisions on various issues concerning human rights.

Dr. H.O. Agarwal in his work *Human Rights* (2004) critically examines the Universal Declaration of Human Rights and various Regional Covenants on Human Rights. He deals comprehensively with the interrelation between the provisions contained in our Constitution and the provisions of the two International Covenants. Particularly interesting is his discussion of the development of human rights following various decisions of the Supreme Court. The learned author makes a highly commendable analysis
of the decisions of the Supreme Court subject-wise, showing clearly which particular human right has been recognised and developed by the Supreme Court in each decision.

1.14 Chapterization

In the light of the above said factors and discussions, the study on “Human Rights in India: With Special reference to the Role of the Kerala State Human Rights Commission,” is schemed into seven chapters.

The first chapter, Introduction, sets forth the importance of human rights, defines human rights and presents the objectives of the study, hypotheses, significance of the study, sources of information, the methodology adopted, relevance of the specific period and book reviews.


The third chapter “Human Rights in India – An Overview” attempts to throw light on the origin and development of human rights in India, human rights protection laws in the Indian Constitution and the role of the Judiciary in the protection of human rights.

The fifth chapter "The Kerala State Human Rights Commission – Constitution, Powers, Functions and Activities" attempts to throw light on the origin, development, powers, functions and activities of the Kerala State Human Rights Commission.

The sixth chapter entitled "The Kerala State Human Rights Commission – The Protector of Human Rights in Kerala" deals with the activities and the working of the Kerala State Human Rights Commission, its important decisions and recommendations and the summary of personal interviews.

Chapter seven, "Conclusion and Suggestions" scrutinizes the working of the Kerala State Human Rights Commission. This chapter evaluates the entire study and also proposes an agenda in the form of suggestions and recommendations.
References and Notes


6 D.D. Basu 5.