Chapter - I

INTRODUCTION
1.1 Introduction

Background

India lies largely on the Indian Plate, the northern portion of the Indo-Australian Plate, whose continental crust forms the Indian subcontinent. The country is situated north of the equator between 8°4' and 37°6' north latitude and 68°7' and 97°25' east longitude. [1] It is the seventh-largest country in the world, with a total area of 3,287,240 square kilometers (1,269,210 sq mi).[2] India measures 3,214 km (1,997 mi) from north to south and 2,933 km (1,822 mi) from east to west. It has a land frontier of 15,200 km (9,445 mi) and a coastline of 7,517 km (4,671 mi).[3]

Many of lawful and institutional organs have tremendous influences of the formal British colonial ruler as well as of its historical background. The Constitution of India is the Supreme Law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens. It is the longest [4] written constitution of any sovereign country in the world, containing 444 (Note1) articles in 22 parts, 12 schedules and 118 amendments. Besides the Hindi version, there is an official English translation. Dr B.R. Ambedkar is widely known as the father of the Indian Constitution. The Constitution was adopted by the Constituent Assembly on 26 November 1949, and came into effect on 26 January 1950. [5] The date 26 January was chosen to commemorate the Purna Swaraj declaration of independence of 1930. With its adoption, the Union of India officially became the modern and contemporary Republic of India and it replaced the Government of India Act 1935 as the country's fundamental governing document. To ensure constitutional autochthony, the
constitutional framers inserted Article 395 in the constitution and by this Article the Indian Independence Act, 1947 was repealed.[6] The Constitution declares India to be a sovereign, socialist, secular, democratic republic, assuring its citizens of justice, equality, and liberty, and endeavors to promote fraternity among them.[7] The words "socialist" and "secular" were added to the definition in 1976 by constitutional amendment (mini constitution).[8] India celebrates the adoption of the constitution on 26 January each year as Republic Day.[9] However, the Constitution of India has declared in the preamble that, "it shall be a fundamental intend of the state to realize through the democratic process a socialist society, free from exploitation. A society in which, the rule of law, fundamental human rights and freedom, equality and justice, political, economic, and social rights will be secured for all citizens." The human rights protection of India has its root in the commitment of its independence movement, which directly relates with the liberation of Indian people as they had faced enormous exploitation by the British ruler. More or less, it is the center point of creation of the State is to realize the rights of the citizens. So, the Constitution itself has declared human rights provisions very expressly with human rights provisions those are taken from international human rights documents. Rather the state is duty bound to realize those rights progressively, which are basically economic, social, and cultural rights. Hence, there is no time barrier for the state to realize those rights. This is creating a scope for the state to act as violator of those rights rather protector. As these are not judicially enforceable, so the victims cannot get the remedies in this case. It is comprehensible that Indian Constitution is very expressive to make the human rights and the fundamental rights under the Constitution, means rights are inviolable. These rights are to be enforced by the Supreme Court of India. The thesis will explain the nature of implementation of these rights by the
judiciary to assess its role to protect human rights. The research will explain the influence of judiciary on good governance since human rights protection is only effective in an environment where good governance is ensured. It is undeniable that an efficacious judiciary plays a vital role in good governance. To be efficacious the judiciary must be fully independent to discharge its duties with complete impartiality or without fear or favor. This thesis will argue that the Supreme Court of India with its Constitutional authority and broad jurisdiction can play the vital role to address the human rights issues more than any other governmental organ in terms of effectiveness and innovativeness. However, there are limitations towards its effectiveness, including political influences, conservative interpretation of legal provisions, and lack of judicial independence. So the aim of this thesis is to identify the potentials and the barriers towards reaching these potentials. It could be done through the active role of the Supreme Court of India expanding its legal authority by making the broad interpretation of the Constitutional provisions. The Constitutional history and the development of the jurisprudence suggest that the judiciary has played quite an impressive role in a democratic government. It has also developed its jurisdiction so as to play a proactive role. Firstly this thesis will focus on the role of the Indian Judicial System and secondly to try to assess its effectiveness to protect human rights. In doing so, certain structural concepts will be investigated, such as problems in organizational structure of the judiciary, appointment of judges, judicial independence, and delay in settlement. On the other hand, this thesis will explain the problems that the Supreme Court in India is facing in certain areas of human rights protection. In this regards apart from the above structural problems, this thesis will bring up issues such as limited access for the poor, the position on international human rights standards, and also address human
rights norms in national laws. Moreover, this thesis will explain the efficiency of the Supreme Court in protecting the rights of the marginalized section of society, the right to safe environment, and public health. Furthermore, the reasons of such protection find support in explaining the grounds of flexible interpretation of constitutional provisions. To this end, in order to explaining the comprehensive glance at the Judiciary's role in human rights protection and judicial activism, this research will also cover the historical development of the Indian judiciary system, judge’s motivation in the application of laws, and initiatives from civil society and media.

1.2 Statement of the Problem

Creswell (1994) and Pajares (2007) stated that problem statement is the issue that exists in the literature, theory or practice that leads to the need for a study and when put clearly should answer the question: ‘Why does this research need to be conducted?’ [10][11]

Today world’s faces one of the great problems called as the violation of human rights. In present scenario the life of human beings is threatened by various types of human rights violations both at the individual level as well as at the international level. Humanity is suffering from mental tension, mutual distrust, dissatisfaction and scarcity of peace and pleasure in life. In this age of globalization, increasing competition, materialism, and loss of spiritual and moral values have turned man into egoist, brutish, selfish and violent. Violence caused the denial of the most fundamental human right, the ‘right to life’, in other words, the right to live with peace. Today the increasing violence in the society destructs the peace of individual and social life. The more recent phenomenon of terrorism has brought the world to the edge of destruction. It is one the great causes of human rights violation in the contemporary world.
Most of the people are still living in terror in many parts of India and the world because terrorist attacks can break out at any time and from any corner. People have no security in their lives. Why this situation is going on in a democratic set up? All persons have the right to live with peace so that they can fully develop all their capacities, physical, intellectual, moral and spiritual, without being the target of any kind of violence. Violence breeds violence and leaves behind a legacy of bitterness, hatred, ill-will, revenge, enmity, suppression and oppression and gives rise to counter violence. Hence violence must be eradicated from the individual and the society to restore the human rights of all. Although the United Nations Declaration of Human Rights came into existence about 56 years ago, but till date we can’t say that every citizen of India enjoys the rights contained in this declaration? Even today millions of people in the world are left without enough food, proper clothing and secure shelter.

Thousands of unemployed youth are looking for a job. In India too, the condition is not better. The majority of the people were denied even the fundamental rights. Labourers are treated as slaves; their women are molested and exploitation of the masses is rampant. The foundation norm governing the concept of Human Rights is that of the respect for human personality and its absolute worth, regardless of colour, race, sex, religion, or other considerations. These rights are essential for the full development of the human personality and for human happiness. Undoubtedly the concept of human rights has always been regarded as the backbone of every democratic set up. To assure the fundamental rights of the people is the fundamental duty of a democratic system. The area of human rights violation is mainly focused on women and children and the downtrodden people of the society such as dalits and tribals. For the protection and promotion of human rights, we have human
Rights Protection Act, SC/ST Atrocities Act, Practice of Untouchability Act, Protection of Civil Liberties Act, etc. But the problem is that, the people are not acting according to the Act.[12] Why such a situation still exists in the present day society? How can we restore our Fundamental inalienable right, the right to live with dignity?

The present study is concerned with **Judicial Activism and Protection of Human Rights**. The Judicial activism and protection of human rights and also to discuss the problems faced by Judicial system to protect the human rights and to stop the violation of human rights in all areas. Thus the main focus is on judicial activism and through this protection of human rights violations and measures needed to solve these problems come under the purview of this study.

1.3 Objectives of the Research

This research has the specific objective to analyze the relationship of the judicial activism and protection of human rights in India. In order to analyze the relationship there is a need to focus on a broader area.

1. To analyze the role of the Supreme Court of India to protect human rights.
2. To determine the limitations of the Judiciary of India to protect human rights, from the perspective of legal and socio-political realities.
3. To find the possible ways through which the Judicial Activism of India could ensure the human rights of under-privileged individuals or groups.
4. To specify the influencing factors that affect the role of the Judicial Activism in protecting human rights.
5. To evaluate the effectiveness of the remedy provided by the courts in cases of violation of human right.

6. To find out, imperfections, if any in the present court practices and make suitable suggestions for better protection of human right.

1.4 Research Questions

This study focuses on the judicial activism and protection of human rights in India, and will address the following research questions:

1. What are the procedures established by law or by the Judiciary system to protect human rights?
2. What are the fair procedure and public interest litigation to protect human rights, from the perspective of legal and socio-political realities?
3. What are the possible ways to protect human dignity and protection against exploitation through the Judicial Activism of India and could ensure the human rights of bonded labour and children?
4. What are the influencing factors that affect the Judicial Activism in protecting human rights?
5. What are legitimate and legal efforts to ensure the Right to Live in Healthy Environment?

The above mentioned points have been examined for the purpose of study. The researcher intends to find out an applicable solution to the above mentioned problems. Analytical study of the above mentioned problems has been carried out for this study on protection of Human Rights.
1.5 Relevance of the Study

In today's world people's lives are constantly and rapidly deteriorating below decent subsistence. The vast majority of humanity is crawling in poverty, economic backwardness and oppression. There is more violence and there are more jobless, poor, sick, hungry and illiterate in this era than in any time in history. In a democratic set up violence causes deterioration of the dignity of life of the people. Every citizen has the right to dignity in life. The growing unemployment, economic insufficiency, poverty etc, are the challenges threatening the dignity of life of the people. How many people know that they have acquired by birth precious fundamental freedoms and rights which cannot be denied to them even by the mighty state? The reality is that there are thousands of people who have not even heard of them. It is imperative to create awareness on human rights among the oppressed and exploited as it is the strongest defense against human rights violations. Violation of human rights remains as a blot on democracy. Who can remove the blot and cleanse the democracy through the restoration of the rights of all? The state or the laws alone cannot protect the rights of the people. But the moral citizens can play an important role in this regard. For that, there is need for restructuring the social system on the basis of love, non-violence, truth, freedom and equality. Without these moral principles, no society can safeguard the rights of all. The implementation of human rights is closely related the betterment of the human condition individually and collectively. These are essential for human progress. Rights may be justified as being inalienable, transcendental, and absolute. Without them a man cannot realize his self or contribute to the good of the society in which he lives. The legal provisions regarding human rights only cannot protect human rights, but the law with morality and the interpretation of the law must change with changing times can safeguard the rights of all. In this
context, the Gandhian perspective on human rights is very relevant in the modern world.

1.6 Scope of the Research

This research will mainly contribute to the understanding of the Judiciary's role in protecting human rights. It finds a wider discussion in the judicial activism in India. The research will give the socio-political background as well as its impact on the development of the judiciary in India. The broader discussion of the research will give a clear understanding about the current level of human rights violations that could be addressed by the judiciary. It will be useful to have knowledge about the unique role of the Supreme Court of India regarding human rights protection since it is working in a distorted political environment. Socio-legal analysis will show the continuous unorthodox practice of the judiciary, the Bar and the Bench.

This research will also discuss the available tools that are used by the Supreme Court for protecting human rights. The authority and area of the writ jurisdiction could be useful for this purpose and made understandable from this research. A writ is a type of suit or a tool of the Supreme Court through which people can claim their rights that could be declared by the authority of the Supreme Court. However, the evolution of the proactive role of the Supreme Court will be made explicable by this research in that it will show the obstacles towards pro-activeness. It will also provide information about the range of "suo muto" practice by the Supreme Court of India. This study will analyze the application of the human rights standards by the Supreme Court's decisions. In doing so, it will explain the authority of local tradition and practices in the judgments of the Higher Judiciary. The increase in of Public Interest Litigation (PIL) in India and its importance will be interpreted in this research. The
importance of the protection of individual as well as group rights by the Judiciary of India will also be interpreted in this research. By in large, this is a contribution to the society.

1.7 Research Methodology

It is a doctrinal and exploratory research* based on the study of Books, Reports, Journals, Magazines, Legislative and Judicial pronouncements, declarations, conventions, treaties and information available on internet and with other databases of the organization and NGOs etc. For this researcher visited libraries of various institutions, to consult the journal and books of learned authors.

* Exploratory research often relies on secondary research such as reviewing available literature and/or data, or qualitative approaches such as informal discussions with consumers, employees, management or competitors, and more formal approaches through in-depth interviews, focus groups, projective methods, case studies or pilot studies. The Internet allows for research methods that are more interactive in nature. Exploratory research is a form of research conducted for a problem that has not been clearly defined. Exploratory research helps determine the best research design, data collection method and selection of subjects. It should draw definitive conclusions only with extreme caution. Given its fundamental nature, exploratory research often concludes that a perceived problem does not actually exist.

Sources of Secondary Data

The sources of secondary data are various documents that are used to support different perspectives. The nature of the research is legal. So, the documentary analysis includes an intensive overview of existing laws, literature related with
the Judiciary, judicial system of India and legal case. The research tends to focus on the scope of the judicial activism involvement in addressing the human rights issues and its protections. To this end, books and articles, both domestic and international, journals and speeches on Supreme Court and its activism, are included as the source of documents. Policy documents, existing national laws, jurisprudence, reports of the United Nations treaty bodies, and the concluding observations, are other documents used for the research. Researcher started the research with the selection of proper sources of the important documents. To this end, the availability of the document was the prime concern. Part of the research methodology required fieldwork in India especially northern part of India due to time constraints and financial scarcity. Sufficient time was spent in the field to find appropriate books and references. The potential sources of books, journals, case laws and judicial decisions are from the Public libraries and libraries of the JNU, DU and AMU Aligarh. I also access the information held by NGOs. The Internet and proper equipment is also a part of the data collection process. Most of the United Nations (UN) documents are available on Internet and therefore easily accessible.

**Key Informants Interviews**

The interview acts as the source of the primary data. It is nearly impossible to get sufficient information on the role of the judicial activism as a human rights protector due to the nature of the data. Therefore interviews are used as the primary source of data. Several interviews were conducted with people from different groups namely, judges and lawyers, media personalis, members of civil society and NGOs', and victims. The judges and lawyers who have been interviewed are working in the Supreme Court of India. The media representatives deal with the court issues and do cover court reporting. Civil
society representatives and NGO members are involved with PIL. In other words, they are well aware of the activities of the Judiciary and judicial system of India, especially about the protection of human rights that acts as the source of primary data. The interviews were semi-structured. Questions were asked on specific topics rather than preparing a particular set of questions. Questions were adjusted according to the need in research, and also to match it with the nature of the research. The interviewees were mainly asked questions on the following topics together with supplementary questions.

- The role of the Judiciary of India in protecting human rights.

- The situations of representative suit and class action of the Supreme Court.

- The problems that are faced by the Supreme Court to protect human rights.

- The influencing factors that could make the Supreme Court an active court.

- The accessibility and affordability of the Judiciary to people who are vulnerable.

- Relationship of Judicial Activism and Protection of Human Rights

Before interviewing, researcher explained the total issue of the research and its background. Interviews were conducted with the full consent on the interviewees.

1.8 Universe of the Study

The universe of the study can be the entire world and all the human beings in it. But it is nearly impossible to conduct such an exhaustive study within a
stipulated time. We are mainly concerned about the people of India and their rights. More importance to the role of human rights and to promote of the dignity and worth in human life is given. Thus the interpretation of the law must change with changing times or judicial activism perspective for the protection of human rights is given importance. Hence researcher limits this study to judicial activism to protect the human rights activities in India.

1.9 Conceptual Definitions of the Study

Distinguish between Judicial Activism in India and Judicial Review

The interpretational and observer role of the Judiciary over the Legislature is called Judicial Review (JR). The judiciary is the final authority for the interpretation of constitution in India. The Judiciary can prevent it by declaring the act or action ultra-virus, if the Legislature transgresses the powers given to it by the constitution. This power is called JR. While Judicial Activism (JA) is the concept how actively and quickly the judiciary performs the act of JR, the readiness that the courts have achieved in exercising its power to uphold the values of the constitution have been generally come to the extent that JR has gradually acquired the form of Judicial Activism (JA) in India.

JA is the extent and the vigour and the readiness with which courts exercise their power of JR. So, there is a marked difference between both of them. Courts have actively performed an interventionist role and that we have witnessed the phenomenon of JA. The courts have over thrown or at least liberalized the concept of locust stand to allow any public spirited person or organisation to bring to the notice of the court any matter of injustice and violation of constitutional rights of any downtrodden and unprivileged classes of society. The court has expanded the scope and amplitude of Article 21 to
cover many basic rights under it, so that giving them the status of fundamental rights; they can be enforced against the state also, even by PIL. Another factor which contributed to the JA was the expansive judicial interpretation placed on the expression life in Article.

Human Rights

For the purpose of present study, the definition of the term ‘Human Rights’ as given under Section 2(d) of the Protection of Human Rights Act, 1993 of India is taken into consideration. Section 2(d) of the Act defines ‘Human Rights’ means 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’.[14]

1.10 Organization of the Study

In order to find answers to the above mentioned questions, the present work has been divided in different Chapters, the scheme of which is as under:

The First Chapter is ”Introduction”. It acquaints us with what is proposed to be done and how it is proposed to be done. It also deals with the importance of the research problem, the objectives of the study, the hypothesis formulated and the methodology applied.

Chapter II is related to the various provisions in the U.N. Charter relating to human rights. An attempt has also been made to study all the three generations of human rights as found in the Universal Declaration of Human Rights and as they are further elaborated in the International Covenant on Civil and Political Rights and in the International Covenant on Economic, Social and Cultural Rights. The implementation mechanism under the said two Covenants has also been discussed; the two Optional Protocols to the Covenant on Civil and Political Rights have also been discussed.
Chapter III is related to the constitutional scheme of human rights in India. An attempt has been made to show that how various provisions of the Indian Constitution correspond to the International Bill of Human Rights and to show further that all the three generations of human rights have been raised to the status of suprema lex. The need and role of the national institutions such an Ombudsman and National Human Rights Commission has been highlighted. The provisions of Human Rights Protection Act 1993, have been analyze.

Chapter IV is related to the role of Judicial System in India and Judicial Activism. This starts with the discussion of the position of the India judiciary in relation with the socio-political development of the country. It explains the areas where the Supreme Court and also the Subordinate Courts can contribute.

Chapter V depicts the judicial activism and human rights in India. In this Chapter, an attempt has been made to show the judicial interpretation has made it possible for the people to enjoy the human rights.

The Sixth and last chapter titled "Conclusions and Suggestions" evaluates the entire study and also proposes an agenda in the form of suggestions and recommendations to the policy makers for better promotion and protection of Human Rights.

References:


