PREFACE

The history of mankind has been firmly associated with the struggle of individuals against injustice, exploitation and disdain. The recognition, first at national and later at international level, of human rights is one of the most remarkable manifestations of this struggle. Recognition, protection and implementation of human rights is a very important and complicated issue because there is no agreed definition and understanding of them term "human rights". It is a dynamic concept and it endeavours to adopt itself to the needs of the day. For this reason, the conditions and opinions prevailing in the given society at a given time and it attains new dimensions with the march of history. In earlier usage, the word 'right' had a legal connotation: for example, the individual had an 'inalienable' right to life and he could not be deprived of that right by the State without due process of law. Today, the word “right” has also the connotation of a goal: for example, the individual has the right to free education, free legal aid, pollution free environment, free medical care etc., which the State is expected to provide. Furthermore, protection and implementation of human rights is a legal problem which requires the definition and codification of rights in the form of municipal laws and treaties. It is also a political problem, which requiring the social pressure in the form of public opinion. All these elements involve international, regional and national activity for effective protection of human rights. The notion of human rights falls within the framework of constitutional law and international law, the purpose of which is to safeguard by institutionalized means the rights of human beings against violations committed by the organs of the State and to promote the establishment of humane living conditions and the all-round development of the human personality.
Importance of the Study

According to traditional international Law, every individual has certain rights which are inherent in all individuals because of their being human and irrespective of their caste, creed, religion, sex, language, ideology and nationality. These rights originate with the very birth of individuals and are essential for the adequate development of the human personality and for human happiness and progress. Due to their inextricable link with human beings, these rights are known as human rights. Thus human rights are necessary for the material and moral uplift of the human race. These human rights are inalienable because the enlightened conscience of the community would not permit the surrender of these rights by any person even of his own violation. These rights are inviolable because they are not only vital for the development and efflorescence of human personality and for preserving its dignity, but also because without them men would be reduced to the level of animals. These rights emanating from natural law deserve protection and implementation both at national and international levels. This is the importance of the study.

Objectives of Present Study

The objectives of the present study are:

1. To historically trace the evolution of international human rights and factors responsible for inclusion of human rights in the form of Fundamental Rights in Part-III of the Indian Constitution.

2. To analyse the human rights provisions of basic international human rights documents and to determine how far these provisions provide machinery for protection and implementation of human rights.
3. To examine various provisions of Fundamental Rights (human rights) of the Indian Constitution and to compare these provisions with international parameters of human rights so as to assess their protection and implementation in India.

4. To analyse the role of ruling elite and non-governmental human rights organizations for protection and implementation of human rights in India.

5. To identify the areas of curtailment and violations of human rights so as to explore the possibility of stopping of future repetition of such unlawful, inhuman and barbaric acts.

6. To explore the possibility to enhance the respect for human rights in the light of current international and national developments.

The Problem of Implementation

The problem of implementation is the problem of seeing to it that human rights are, in fact, respected. In principle, the problem might be left to the good faith of individual states, to be solved by the constitutional, legislative and other measures that they can take within the limits of their domestic jurisdiction. In fact, national measures are obviously necessary and inevitable. But almost all states are of the view that international agencies must be involved, authorized to act in specified way. Hence, it requires comparative study of human rights and working of enforcement machinery for implementation of these rights on national as well as international level.

A good deal of literature pertaining to the importance and utility of human rights as guaranteed by international conventions is available. But no specific effort has been made by jurists to analyse and evaluate the national standard of implementation of human rights with that of international
standards. No doubt, fundamental rights are a reflection of human rights but curtailment and violations of these rights promoted to make an in depth study of implementation of human rights in India in this thesis.

Review of Literature

A plethora of theoretical and empirical studies relating to recognition and protection of human rights on international and regional level have been undertaken by various scholars. Some efforts have also been made by jurists to analyse the various Fundamental Rights which are guaranteed in Part III of the Indian Constitution so as to assess their importance as human rights. But most of the studies international or national concern only with specific aspects of this problem. However, for the purpose of review, the researcher has classified available literature into categories – literature on Human Rights, books on the Constitution of India and other related works.

a. Literature on Human Rights


P.R. Newberg (ed.), The Politics of Human Rights (1981), is an interesting collection of essays on theoretical and practical aspects of human rights protection including some very interesting studies of problems in the under-developed world.

B.G. Ramcharan (ed.), Human Rights: Thirty years after the Universal Declaration (1979), is an important collection of essays reviewing the progress of human rights in the 30 years following the adoption of the
Universal Declaration of Human Rights in 1948 and making suggestions for further development.

H.O. Agarwal in his work, Implementation of Human Rights Covenants (1983), examines international standard for the protection of human rights and compares them with that of Indian standards. In this regard, it throws light upon how there is a difference of theme and reality. It enumerates those Fundamental Rights which have been enshrined in Part III of the Indian Constitution. Besides this, it also enlists those rights which are available to the citizens of India by liberal interpretation of Article 21 which otherwise are not specifically mentioned in the Constitution.

T.S. Batra in his study, Human Rights – A Critique (1979), is much worried 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, human beings seeking such rights are tortured maimed, disemboweled, killed and even burnt alive. Prisons all over the world ring with the cries of their unfortunate victims. This work is useful to identify the areas of violations of human rights.

Justice E.S. Venkataramaiah (ed.), Human Rights in the Changing World (1988), in which contains various articles out of which some are useful to the present study. These includes, 'Human Right – The Indian Experiment', The development of the right to Development', and 'Philosophical Back-ground of Human Rights'. These articles are helpful to trace out the development of various rights in our country.

Jack Donnelly in his study, The Concept of Human Rights (1985), explains that to have a 'Right' one should be right. It elaborates the sources of human rights and sets limits of State action while guaranteeing human rights. It examines the correlation of natural law and human rights.
R.S. Agarwal in his work, Human Rights in the Modern World (1979),
deals with the nature of condition of human rights in developing countries.
According to him, each country is entitled to develop its own forms and
methods for the realization of civil, political, economic, social and cultural
rights.

Maurice Cranston in his work entitled, What are Human Rights
(1973), traces the history of human rights from natural rights. He firstly,
clarifies the concept of rights and morality and then analyses the
justification of rights. This work also examines the right to life, liberty and
property in retrospective sphere. It has nothing to do with the present
political systems and their working in the frame work of rights.

enlists the way and means for enforcement of human rights during peace
and war. It contains actual picture of human rights which need strong hand
to implement them. The study of this work provides insight to the problem of
enforcement of rights in India. The entire book is devoted to only legal
aspect of human rights thereby ignoring political implications of these rights.

The main emphasis of K.L. Bhatia's (ed.) Judicial Activism and Social
Change (1990), is to see the effect of Judicial Activism on Socio-economic
change. Particularly its Section III namely "Civil Liberties and Judicial
Activism" is relevant for the present work as in it the various contributors
tried to analyse the effect of Judicial Activism of Fundamental rights.

Granville Austin in his painstaking study entitled The Indian
Constitution: Cornerstone of a nation (1966), has very nicely explained the
sequence of events during the freedom struggle and how an agreement on
the need for having fundamental rights for the Indian people was arrived at.
It also brings to limelight how consensus was arrived at by the founding
fathers of the Indian Constitution to have a set of seven fundamental rights
after taking into consideration various points of view echoed by the
distinguished members of the Constituent Assembly of India.

J.N. Pandey in his Constitution Law of India (1988), throws light upon
the institutional framework of the Indian Government. It gives legal
interpretation of rights guaranteed in the "Fundamental Rights". This book is
helpful to understand judicial pronouncements regarding the fundamental
rights.

In the same tone, M.P. Jain in his book, Indian Constitution (1978),
has devoted his energies in explaining the legal interpretation of various
provisions of the Indian Constitution. It is also helpful to systematize the
judicial decisions on this subject.

L.M. Singhvi's (ed.), Fundamental Rights and Constitutional Amendment
(1971), is yet another useful work which throws light by virtue of various
articles written by constitutional experts on the amendability of Fundamental
Rights. This work discusses the importance and utility of Fundamental
Rights which form the core of the Indian constitution.

the various provisions of the Indian Constitution relating to fundamental
rights. This book relies more upon court decisions ignoring the social
aspects of the problem.

In the same vein, Mangal Chandra Jain in his study, Constitution of
India (1984), analyses various judicial decisions relating to fundamental
rights.

b. Other Related Works

Upendra Baxi, Courage, Craft and Contention – The Supreme Court
in Eighties (1985), contains lectures delivered by the learned writer where
the explores the process of judicial activism which means, in the context of
the growing lawlessness of the Indian state and pervasive brutalization of India, the ascendancy of the Written Constitution over an unwritten one. This book is an eye opener for the judges and politicians.

T.R. Subramanyam in his work, Rights and Status of the Individual in International Law (1984) furnishes first hand information about the primacy of man in the social order, without being ridden by apriori doctines. It also examines the erosion of the traditional doctrine of state sovereignty and discusses the rights acquired by individuals under international law.

Methodology

The study undertaken is basically historical, political, sociological, economical and cultural. The topic is most universal application. However, for the purpose of thesis, select areas only are taken into consideration. The researcher has collected large amount of material and various literature pertaining the topic through primary and secondary sources. Primary sources are parliamentary acts, bills passed, notifications, views of Human Rights experts etc. The secondary sources are books, articles in journals and news papers and the notifications of relevant national and international organizations are pursued and analysed. The methodology followed is narrative, descriptive and analytical.

Need for the Study

Rights are the ground work of a state. The nature of the state is known by the rights it maintains. For the socio, economic, political development of the people in a country rights are necessary for physical and mental development. Human rights play a very important role in a society. Without Human Rights there is no development of individuals as well as the state. That is why national and international organizations including UN are stressing for the enjoyment of Human Rights by the individuals. Going to their historical perspectives, however they functioned
and in what ways they influenced directly or indirectly, the policies, programmes and activities of the government. It is also the aim of the thesis to indicate wherever it is possible what policies and programmes could be decided upon and implemented in the larger welfare of mankind. In the context of good governance becoming more and more important in recent times, the nature, the role and character of sovereign state government and international institutions assume greater relevance. It is good to thread upon and review the paths of transition and change as well. These explain the need for the study.