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 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. 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.

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 recognized by society and enforced by the State. Rights are the external conditions necessary for the greatest possible development of the capabilities of an individual.

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".

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.

India being the largest democracy and signatory to many international conventions and covenants should give special importance to human rights but ironically the record of human rights in India is not very satisfactory and encouraging as many people are subjected to exploitation, injustice, physical torture, and violence. Mass of the people are illiterate, under-privileged and are unaware of the law or even of
their legal rights, unacquainted with the niceties of procedure involved, and too impoverished to engage lawyers, file papers and been heavy expenditure on dilatory litigation. Briefly speaking, ignorance and poverty are twins and social backwardness a third close associate. Those misfortunes intercept the advantage, which the law confers on the disfavoured. Socio-economic legislation confers benefits on women and children on the working class, and others weaker sections, but these groups are unable to draw the intended dividends, owing to the lack of understanding of their rights and of financial stamina to assert them.

In India, the concept of human rights received constitutional blessings in its different parts. It must be said to the credit of India that within a short span of time, it had in its new Constitution, adopted most of the principles of the Universal Declaration of Human Rights as an integral part of constitutional obligations. Keeping in view the constitutional commitment set forth in Part-III (Fundamental Rights) and Part-IV (Directive Principles of State Policy) and the commitment towards human rights, the court in India developed Public Interest Litigation (PIL) as a special device to come to grips with the problems of contemporary society and ensuring that not civil and political rights alone but economic and social rights are also necessary for survival.

The judiciary is being envisaged not as a redressal forum for elite class in the society. Instead, it is seen and perceived as a forum for raising, redressing and articulating the problems of the have-nots, the deprived, the oppressed and the downtrodden, women and the children environmental groups, victims of bureaucratic exploitation and the abuse of power and position by persons holding high public offices. The courts have become a forum for the representation, articulation and
protection of the basic human rights of the people who on account of their social and economic disabilities can not approach the court for the enforcement of their fundamental rights.

The Indian Constitution, the fundamental law of the land had been drafted with the four-fold objective of securing justice, liberty, equality and fraternity to all the Indian citizens. The Constitution has allocated different powers and functions to the three organs of the State viz., Legislature, Executive and Judiciary. These organs play an important role in the achievement of the said objective. Traditionally, the Legislature makes the law, the Executive implements the same and the Judiciary adjudicates and interprets the law. The judiciary in India, especially the higher judiciary has been assigned a vital role in various areas like upholding the federal principle, interpretation of the laws made by respective legislatures, testing the validity of such laws and more importantly in protecting the fundamental rights of the citizens. The Supreme Court stands at the top of the hierarchy of the courts constituted under the Constitution. It is the final arbiter as to the upholding of the federal principle, the validity of a law or executive action and as to the enforcement of fundamental rights of the citizens.

In a welfare state like India, the judiciary especially the apex court plays an important role. Apart from performing its traditional functions like upholding the federal principle and interpreting the laws made, the court also exercises the power of judicial review to decide the validity of the executive or legislative actions of the state. The Supreme Court of India being the highest court of the land shapes the destiny of millions of Indians by exercising the various jurisdictions vested in it by the Constitution. Sir Alladi Krishnaswami Ayyar had predicted with
great vision, way back in 1949 that "the future evolution of the Indian Constitution will thus depend to a large extent upon the Supreme Court and the direction given to it by that court." An important issue that has assumed significance in recent times has been the activist role played by the Indian judiciary especially the Supreme Court. The expression "judicial activism" has eluded a precise definition as it means different things to different people. It might mean dynamism to judges, judicial creativity to some, judicial legislation to some others and it may be an effort to bring "social revolution" through the judiciary. The Indian Constitution has come into force on 26th January in 1950. The Supreme Court of India was established under this Constitution and its existence coincides with that of the Constitution itself. Ever since its inception, the Supreme Court has been playing a vital role in the lives of the citizens as the highest court of the land, as an umpire in upholding the federal principle implicit in the Constitution and last but not the least in protecting the fundamental rights of the citizens guaranteed by Part III of the Constitution. Over the period of last six decades, the apex court has transformed from the role of 'interpreter of law' to the role of 'maker of laws'. The performance of the Supreme Court-led higher judiciary in India has been uneven. In the fifties and sixties, the judiciary was confronted with many issues involving the validity of agrarian reforms introduced by the Parliament and the state legislatures. Many legislation were struck down as unconstitutional on the ground of violation of the fundamental right to property guaranteed in Part III. Probably the background of the judges sitting in the Supreme Court at that time which showed that most of them were foreign educated, hailing from the families holding large tracts of land and that some of them were from the traditional and conservative families, had
influenced the judicial behaviour in 1950's and 1960's. As regards the 1970's, inspite of the historical judgment in *Keshavananda Bharati v. State of Kerala*, the Supreme Court could not continue the momentum it built upon the 'basic structure' spirit. In fact up till the epoch making judgment of the Supreme Court in *Maneka Gandhi v. Union of India*, there were no activist traits on the part of the Supreme Court. The Supreme Court has come into its own, as an institution only in the 1980's. The court demonstrated that it can be as active as any other judiciary in the world. The court commenced its dynamic role in safeguarding and protecting the fundamental rights of the citizens and in putting an effective check on the other two organs of the state viz; the Executive and the Legislature only in the 1980's. It has become possible, solely due to the dynamism and willingness of a few judges like Justice Krishna Iyer, Justice Chandrachud, Justice Bhagwati, Justice Chinnappa Reddy and Justice Kartzu. This list is only illustrative in nature. As a result, the Supreme Court has become increasingly people-oriented in its post emergency phase. The new batch of judges representing the second generation Indians of free India, and claiming to possess a power to participate in the community welfare through their own philosophies and ideologies made a vast distinction and prompted the judiciary in India, to acquire a new shape and face.

"All Human Rights for All", was the mandate of the Universal Declaration of Human Rights (UDHR) adopted by the United Nations on 10th December, 1948 nearly 60 years ago. After India attained independence, the people of India gave to themselves a new Constitution, containing fundamental rights, which incorporated all the
human rights, mentioned in the UDHR. The language of human rights carries great rhetorical force of uncertain practical significance. In other words, the meaning and scope of each right has to be clarified, the content and location of any co-relative duties to which it gives rise must be spelt out, and the permissible range of exceptions and limitations specified.

Family is a basic and universal unit of human society. It performs functions that are necessary for the continuity, integration and development of social life. In most traditional societies family has been the unit of social, cultural, religious, economic and political activities and organizations. In modern industrial societies, the family performs primarily the functions of reproduction, socialization and provision of emotional satisfaction. A family is a domestic group of people, or a number of domestic groups, typically affiliated by birth or marriage, or by comparable legal relationships including adoption. There are a number of variations in the basic family structure. Throughout history, families have been central to human society; a key indicator of a society's well-being is the health of its families. For this reason, as stated in Article 16(3) of the Universal Declaration of Human Rights, "The (family is the) natural and fundamental group unit of society and is entitled to protection by society and the State." The family is the basic social unit for the expression of love between man and woman and the creation and rising of children. The family tames the wilder impulses of men to the responsibilities of fatherhood, enables young women to blossom as mothers, and cultivates morality in children. Moral virtues, empathy, and good human relationships are learned in the family. An important indicator of the social value of the
family is the capacity for strengthening the link between generations. The procreative and educative dimensions of the family constitute an indisputable economic factor which must be recognized as such. The family is the "basic community of society". The public authorities must therefore protect it, because it comes before the State and any political organization. This essential protection has been the object of law. Law is the key centralizing institution possessed by modern societies. Law is increasingly being called upon as a tool to address the post-conflict situation and facilitate societal changes. It is increasingly assumed that law can and should play a central role in both the resolution of and progression from conflicts. The reasons put forward for this increasing role of law include the (growing) interrelationship between public order and legal order, and the expanding reach of law due to global forces: the human rights dictum is a global norm due indeed to globalization. It is assumed that the goals of the post-conflict society are synonymous with the capacities and reach of the institution of law.

India is a multi-linguistic, multi-cultural and multi-religious state of more than a billion people, of which almost half comprise females. The principles of fairness and equity are enshrined in the Constitution of India, that unequivocally mandates gender equality. Such equality - truly in fact and deed is imperative for the development of India, for no country if it is to prosper can afford to underutilize or suppress half its human resources that women represent. Discrimination and violence against women do not just victimize the individual women, but do indeed hold back whole sections of society. Guaranteeing rights to women is an investment in making the whole nation stronger and self-
reliant. In India, it is particularly the Personal law that principally
governs the lives of women, though to many, the exact dimension and
how it controls the lives of each one of us may not be very clear. Simply
stated, Personal law is the set of rules which govern the behavior of
individuals vis a vis their family i.e. spouse, parents, children etc. As
often seen, law by itself is no deterrent against crime. In fact it is the
attitude of society in general and the individual in particular that
determines the effectiveness of any legal system. Thus, laws are nothing
but codified social behaviour, so in order to make the law effective there
is equally a back-up requirement for social education and social
transformation. As a matter of fact, conditioned by the old historical and
patriarchal social baggage even the provisions of personal law often
betray a certain underlying bias that tends to treat women as if they
essentially were the property of a man and that all her entitlements are
not a function of her right but a function of her status as the property of
the male vis a vis whom her rights are sought to be enforced. It has been
widely observed that the rights that women have under personal law are
often usurped. Though the law provides for a judicial procedure to
enforce the law by way of courts as well as the penalty for violating the
law, women being socially and economically subservient are either
unaware or unable to enforce these legal rights through courts. Most
common people are apprehensive and reluctant to approach the court
because the language of the law is difficult and the procedure often
extremely complicated, for example, if two people are faced with the
same legal problem, depending on where they reside, their religion etc.,
the court of jurisdiction and remedy available to them may be different.
Women in India though common in need and circumstance are divided by caste, religion, social and regional customs. Hence, even after 60 years of Independence, issues fundamental to all women such as, maintenance, custody, physical and mental security in marriage, fair and equal divorce entitlements, continue to elude them. Women face multiple hurdles in getting legal redress of their problems. These problems arise not only as a result of different laws governing women but also from the fact that there is no common court having jurisdiction over women's issues. As a result women have to run to different forums to seek each relief separately. For example, Hindu women are governed by The Hindu Marriage Act, 1955 for divorce. The Hindu Adoption and Maintenance Act, 1956 for maintenance, The Guardians and Wards Act, 1890 for custody, and The Hindu Succession Act, 1956 for inheritance; Muslims are governed by The Muslim Personal Law (Shariat) Application Act, 1937 and The Muslim Women (Protection of Rights on Divorce) Act, 1986 Christian women are governed by the Indian Divorce Act, 1869, Parsis are governed by The Parsi Marriage and Divorce Act, 1936. Each of these Acts vests jurisdiction in a different court. This multiplicity of litigation increases the physical and financial burden of litigation manifold. Above all, there is the problem of ignorance of the law. Most women and many service providers including doctors, social workers and often lawyers are not aware of the specific scope and extent of the legal rights of women both under the statute and judicial precedent. The inability of women to access justice through the legal system is magnified by the fact that most women are not economically independent and lack the financial capacity to contest a legal battle. Even socially, women are mostly restricted within the sphere of family and home, and live outside the legal system. Therefore,
when women face issues of domestic violence and the family support structure breaks down they find themselves vulnerable and remediless. It is this socio-economic vulnerability that encourages discrimination and violence against women.

The woman in Independent India has come to acquire a better status in the society than ever before in any period of India's history. With the march of time and progress since Independence, the woman has gradually come to acquire considerable emancipation from the complexes and ills with which she had been suffering for long. Today's woman has come to have better acceptability and respectability, better status of equality with men, better rights and privileges, better opportunities and avenues, in all the spheres of national life—social, economic and political. In the emancipation and liberation of woman, in the recognition of her legitimate place in the family and the society, in the recognition and protection of her interests, rights and privileges, and in the gradual enhancement of her status, the law has played great role as an instrument of change.

The nature of this research is unique in post-independent India as it attempts first time to analyze the role of judiciary in the protection of human rights. A great number of cases decided by the courts since 1950 recognize, uphold, protect or restrict rights and interests of women and lay down principles which are legally enforceable. These decisions throw a flood of light on the status of women and are immensely useful in understanding the true scope of legal protection.

The universe of this study is confined to the cases decided by the Supreme Court and High Courts. We have left out all such cases which have been decided merely on facts and, generally speaking, do not lay
down any principle of general application. Such cases also have been excluded which merely follow an established line of precedents and hardly pretend to lay down a new principle in any appreciable manner. Where there are several cases declaring the same principle the latest in point of time is taken up for inclusion. No claim is made to make the present study exhaustive as no work of this kind could ever claim to be. It is essentially selective in nature and coverage, though every effort has been made to give it as wide a coverage as could be possible.

**Objectives of the Study:**

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. The evolution, growth and advent of Public Interest Litigation in India and the role of the Supreme Court thereon. Its contribution in specific areas of constitutional law.

7. The judicial approach to Article 21 of the Constitution and expansion of the horizons of the life and personal liberty thereunder.
8. To discuss and analyze the concepts of Human Rights, Judicial activism and Judicial review.

9. To evaluate and assess the role of judiciary in the specific area of Constitutional law.

10. To evaluate and assess the role of judiciary in the specific area of Family laws of four communities viz., Hindu, Muslim, Christian and Parsis.

11. To assess the judicial activism, its extent and impact on the development of specific areas of constitutional law which include the expanding scope of the right to life, personal liberty, minority rights, constitutional remedies and Public Interest Litigation.

12. To assess the judicial activism, its extent and impact on the development of specific areas of family laws the marriage, divorce and maintenance of Hindu, Muslim, Christian and Parsis.

**Hypothesis of the study:**

This study has been undertaken to put the test of following Hypothesis:

1. The judiciary in modern times not only declares law but also makes the law. Thus, the role of the court has changed from merely interpreter of law to maker of law.

2. Judicial Activism of the Supreme Court is nothing but the conscious exercise by judges of the power of judicial review to meet the changing needs of time.
3. Judicial Activism is a result of the failure or indifference on the part of the two political organs of the State namely the legislature and the Executive, to discharge their constitutional responsibilities assigned under the Constitution.

4. Along with the Legislature and the Executive, the Judicial Branch of the State by its judicial activism, has contributed more for the development of specific areas in the constitutional law and family law.

5. The judicial activism has been primarily instrumental in the Supreme Court of India becoming the Supreme Court for Indians.

6. The judicial activism of the Supreme Court is not only defensible but it may also be indispensable to the Indian System of Government and Constitutionalism.

7. In modern times human rights are regarded as the most important rights.

8. The United Nations provide a good background for the development of human rights.

9. Human rights are found in the ancient Indian thought.


11. The protection of Human Rights Act, 1993 and the Constitution of National Human Rights Commission encourage protection of human rights. However, NHRC is a weak body that suffers from inherent weaknesses.
12. The judiciary in India has expanded the scope of Article 21 of the Constitution.

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

Methodology:

To complete this research project the doctrinal research 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 analyzing the judicial behaviour of the Supreme Court and the State High Courts as well as the role and function of the National Human Rights Commission, the methodology adopted is analytical. The study involves reference to a plethora of cases to ascertain the dicta laid down therein, hence empirical method has been followed. On the whole, the work has been mainly library based and doctrinal in nature with traits of historical and analytical methodology. This doctrinal work has been in the form of critical surveys of judicial decisions or of the constitutional provisions. These surveys or analysis have been conducted by studying the decisions rendered by the Supreme Court and different High Courts and considering their brief facts, questions involved, principles laid down, the relief given to the parties, the short term impact of the judgment and its long term impact. The main purpose and object of this study, is to assess the long term impact of the decisions given by the Supreme court of India and their contribution in bringing about a legal and social change within the parameters of the Constitution of India.
Sources of Information:

To accomplish this research venture, the researcher had to utilize the pieces of information 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 judgments of the Supreme Court and State High Courts.

Secondary sources:

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

Scheme of the Study:

To facilitate the research venture, the researcher classifies this study "Protection of Human Rights through Judicial Activism in Post-Independent India: Evaluative Study in Selected Area of Constitutional Law and Family Relations" into four parts apart from Introduction, Conclusion and Suggestions.

The concept and meaning of Human Rights, different approaches to Human Rights and their analysis, Evolution of Human Rights, United Nations Mechanism for protection and promotion of Human Rights,
Universal Declaration of Human Rights, Human Rights in Indian Perspectives and National Human Rights Commission have been discussed in part first of this study.

A detailed treatment has been given under the caption of conceptual Analysis of Judicial Activism which constitutes Part second of our study. It includes meaning and Evolution of Judicial Activism, Analysis of different approaches, Judicial Review, Development of Judicial Activism, Expansion of Human Rights with reference to Article 21 of the Constitution and Analysis for emergence for Public Interest Litigation (PIL) in India.

Part third projects the judicial activism in the area of Constitutional Law wherein expansion has taken place through judicial activism in the following areas: 1) Equality Rights, 2) Liberty Rights, 3) Minority Rights and 4) Right to Constitutional Remedies.

The part fourth entitled to the judicial activism in the area of family law wherein expansion has taken place through judicial activism in selected areas viz., Marriage, Divorce and Maintenance under the Hindu Law, Muslim Law, Christian Law and Parsi Law.

Under the caption conclusion and suggestions the academic exercise and research venture have pin-pointed the outcome of the study along with the solution which the researcher finds appropriate within the framework of this study.
REFERENCES


