CHAPTER 1

INTRODUCTION
INTRODUCTION

Human rights are those minimal 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 like caste, colour, creed or sex. The concept of human right is as old as ancient doctrine of natural rights founded as the natural law. However the expression of human right is of recent origin emerging from the post Second World War period. The concept of human right is based on the dignity and worth of the individuals. The unit of creation without reference to man-made division is based on colour, race, sex, religion etc. Human rights are essential for the realisation of the potential of every human being. The basic concept of equality is ingrained in human dignity which contains not only the civil and political rights but the social, economic and cultural rights also. These rights are most precious possession of mankind and a world without them will have to face a perpetual risk of moral depredation. Human rights have been recognised as standards of achieved norms of behaviour of all member of society. They form foundation of the society and are inalienable. The human rights can be classified into three main categories: (1) rights of personal integrity, (ii) civil liberties, and (iii) social and economic rights.

2 ibid.
In probably all walks of human life man has witnessed rising of two seemingly conflicting claims, one is of the development and the other is of humanity. The latter will give human face to development but it seems that present day world is moving on the path of development without giving importance to dignity of mankind. In this context the first and foremost area of concern is to give a precise meaning to the term human rights. The three generations of the term human rights which shall be discussed in the body of this work have their relevance in prevalent social needs at the contemporary period. A through reading of available texts in the area of human rights gives an impression that such issue must be addressed to bridge the growing gap between international development and national initiation. The present work tries to widen the discussion to include disparities between two. The second preambular paragraph of United Nation Charter defines human rights as the rights which are inherent in the nature of human being. Whereas section 2(d) of the Protection of Human Rights Act, 1993, defines it as the rights guaranteed by the Constitution of India as embodied in the International Covenants and are enforceable by the Courts in India. The above mentioned two definitions create anomalous situations arising out of the provisions of their enforceability by the Court. Some of the rights covered in the United Nation Charter are not the part of the Fundamental Rights in the Constitution of India; hence, cannot be enforced by the Court. They are enshrined as the Directive Principles of State Policy and are not enforceable by the Law; so in
the context of India these provisions do not come under the term Human Rights.

For the purpose of the present work the theme has been divided into the following broad areas:

(1) Human Rights and Police

The Police is an organ in the society to preserve the human rights of the people. Law enforcement and maintenance of law and order, security, crime prevention and crime detection are performed by the police authority. Indian Penal Code, 1860, Criminal Procedure Code, 1973, and Indian Evidence Act, 1872 are main statutes to govern the role and performance of police. All cognizable offences are dealt with the section 41 of the Criminal Procedure Code and the police officer may arrest any person without even the warrant issued by the Court. They have to take immediate action after receiving any credible information. It is the duty of the police to lodge F.I.R. if any one comes and gives information about an offence. They investigate the cases and arrest the accused. It is the duty of the police to collect facts as the evidence; however, in the process the police are supposed not to be brutal and should always respect the human dignity. It is also the duty of the police to produce the accused before the magistrate within 24 hours of the arrest. The police, however, sometimes become brutal and torture the accused. Sometimes the brutality has resulted even to the custodial deaths. In many cases the police arrest the person who has not committed the offence and compel him/her/Them to confess for such offence. The law says that if
accused is ready to go with police no question of hand cuffing should be there. But it has become common practice that during investigation police usually arrest and handcuff the accused. Faked encounter by the police has become another common practice as the police brutality. This type of encounter is generally the outcome of false prestige or greediness of some of the police officers. Sometime it takes place because of political pressure and personal grudge too. Our criminal justice system is based on proved evidence but the problem is that if a person is tortured and hurt by the police in the custody; the victim cannot give evidence to the effect that the hurt is the outcome of the police brutality. The police generally project the injury as the injury before the arrest. Although our Constitution as well as international documents provides that personal dignity of every human being should be respected. The atrocities on the bodies are one of the most barbaric acts against humanity and are considered to be very denial of human rights. Unfortunately such cries are unheard and unnoticed.

Indian judiciary has also extended the meaning of right to life as provided under Article 21 of the Constitution and included right to life with human dignity. Sometime judiciary directed to pay compensation to the accused. In many cases women accused are sexually exploited by the police personnel.

Now the question is: Why the police are involved in such activities? Why are they not punished for the violation of human rights? Whether are not provisions of statutes sufficient to control
police atrocities? Or, are there loopholes in the statutes and in their implementation? Why these issues are still unsolved? All these matters are discussed in details in the main body of the thesis.

(2) Human Rights and Prisoners

Prisoners who are kept inside the wall are the people whose human rights are continuously being violated. Overcrowding in jail is the major problem. Indian jail has less capacity but numbers of inmates are more. Because of overcrowding other problems have also cropped up inside the jail. Budget for jail is lesser than its requirement. Some of the prisoners at the time of admission are suffering from disease. It is the duty of jail officers that the prisoners should be medically examined and proper treatment should be given to them, but these are seldom done timely and effectively. The condition also causes problems to other inmates. The quality food is not provided to the inmates, which is gross violation of human rights. Sanitary problems inside the jail are another problem of concern. Sanitary facilities are generally inadequate inside the jail. Discrimination among prisoners is also an area which needs our attention. The discrimination is generally due to the political position and affiliations of the inmates and corruption among the jail authorities. There are large number of undertrial prisoners who are not released on bail, though they have committed petty offences. Even some of them are not aware with the offence committed by them. Another problem is the problem related to unfulfilled sexual needs in case of the majority of the
inmates. Sexual exploitation i.e., forced homosexuality etc. inside
the jail is always a big worry for all of us. Another problem is
criminality in jail. The main factor of the criminality is non-
pacifying of sex and separation from family for long time. They are
not being paid proper wages though they work full time. Clearly,
this leads to a violation of the human rights.

The conditions of women prisoners are critical which need to
be addressed seriously. Some of them have small kids and children.
Those kids are undergoing imprisonment even without any offence.
The present work discusses the women and children specific
problems in particular. It also discusses the ways and means to
remove them.

(3) Human Rights and Women

As we all know that women are important pillar of the
society. It is unfortunate that they are not being paid proper respect.
They are struggling for their due in the society. There are
provisions in the statutes to protect the human rights of women.
The constitution of India guarantees equal rights for men and
women. In particular it provides special provisions for women.
Even then they are facing various problems. These may be related
to domestic violence, sexual harassment, discrimination etc.
Although the Protection of Women from Domestic Violence Act,
came into existence in 2005, it is a matter of serious scrutiny. The
Dowry Prohibition Act, 1961 came into force on 1st July 1961, has
failed to check the dowry system. It shows lack of political will.
There are various guidelines in this regard issued by the Supreme Court. Are these guidelines implemented properly? Why female literacy is lesser than male? Why dropout rate among girls from school is higher than the boys and the rate is increasing? All these issues are discussed in the text elaborately. Some other types of problems related with religion, where victims are women. Especially in the Muslim community discrimination between male and female reveals acute embarrassment. Male can enter into marriage with four wives. But wife will not be allowed to do so. Similarly under the Indian Penal Code, 1860, in case of adultery, it is an offence against husband not against wife. If husband is guilty of adultery, wife cannot bring action against him. Another problem is related with Kartaship. In 2005, an amendment took place in Hindu Succession Act, 1956, through which daughter can be a coparcener of Hindu Undivided Family. But can she be Karta of H.U.F.? It is still not clear. These all various issues discussed in the text.

(4) Human Rights and Child

It is well known that children are the supreme assets of the nations. They play an important role in the development of the nation. Whether they are getting proper protection or not is a matter of concern. In spite of getting legal protection they are abused physically, emotionally and various other ways. Many of them do not have privilege of proper education. This is indeed a breach of privilege. Many of them are working as bonded laborers in carpet industry, farm sectors, real estate, tea industry and tea stalls, hotel,
unorganized sectors, etc. on daily wages, but earn very low. Also, the wages they earn for work is not enough to pay for the basic things they need to live. All these problems are discussed in the text.

The main question regarding the violation of human rights of children is child education. Though there is provision in the constitution as well as in international documents, but these are not implemented properly. They are compelled to join various hazardous activities like the carpet industry, or on tea stall and hotels. Some of them are employed in cleaning process. Why are they not getting proper education and proper facility? Indian judiciary has tried to solve this problem and has also issued various guidelines, but enforcement is still a problem. Kidnapping and trafficking of children has continued despite several legal protections. Childhood is lost for ever. What are the various reasons behind it are discussed in the present text.

(5) Human Rights and Environment

Human rights and environment are closely related with each other. Judiciary has pronounced the right to healthy environment as a fundamental right under the Article 21 of the Constitution of India.

Industrial trade and development have been the issue of debate ever since. The developed countries had proposed exploitation of natural resources. As a result of which cities and towns have become polluted. Forest falling has led to climate
change. Ozone layer is being depleted and fertility of earth is getting reduced. Besides these, acid rain and global warming are the international issues. There are many international agreements but none of the developed country is respecting them. Sustainable development is based on two principles. They are precautionary principle and polluter pays principle. But the question is whether sustainable development's theme is strictly followed or not? The meaning of sustainable development is development without side effect. But in the time of globalization the picture is different. High dams have been constructed continuously which resulted displacement of the people of that area. United Nation Conference on Human Environment was held in Stockholm, thirty six years ago, which inspired the world population for preservation of human environment. Being a party to such conference India brings change in constitutional provision. The Constitution is a guiding force for human and State activities. Mandate of the Supreme Court to ensure environmental security under constitutional guidance is a benchmark in Indian jurisprudence. Some hard decisions have compelled the State functionaries to bear responsibilities as enunciated in the Stockholm Declaration.

Right to livelihood vs. right to environment is an important issue. Sometime for the sake of clean environment people are displaced from that area due to which livelihood problems occur. Similarly for saving the forest and wild animal’s, indigenous people are displaced. How livelihood of denotified persons can be saved? How can balance be maintained between development and
environment? These are the issues which have been tried to discuss in the text.

(6) Human Rights and Enforcement

From the different statutes and judicial pronouncements it is found that all the rights guaranteed under the Indian Constitution are part of human rights. For the enforcement and fundamental freedoms numbers of special bodies have been established in accordance with international conventions dealing with particular aspects of human rights. On international level these bodies are Human Rights Committee, Committee on the Elimination of Discrimination against Women, Committee against Torture and Committee on the Right of Child etc. These bodies supervise the enforcement of relevant international human rights conventions by reviewing information received from state parties and non-governmental organisations. Apart from the above committee, UNESCO and ILO have developed their supervisory body.

In addition to the above there are a number of inter-governmental agreements for the promotion and protection of human rights in European, American and African regions. But in Asian region no inter-governmental agreement for the promotion and protection of human rights has so far been worked out.

In India, the Parliament has enacted the Protection of Human Rights Act, 1993, for the constitution of the National Human Rights Commission, State Human Rights Commissions and Human Rights Courts for better protection of human rights and for matters
connected therewith. They have their own team for investigation. But it has power of recommendations only. They will refer the matter to the Court. They do not have judicial power. Another problem is that it can entertain the matter only within one year of the incident otherwise it will be time barred and it cannot be entertained by the Commission. Another point of attention is that if already inquiry is being conducted by any other Commission constituted by law, the State Human Rights Commission cannot enquire it. All these aspects including the aspects of the National Human Rights Commission, and State Human Rights Commission have been discussed in this text.

**Methodology and Data Collection:**

The research method which has been adopted in the present work is descriptive and analytical. However, field study has not been made but wherever it is necessary the researcher has tried to substantiate the study through suitable data collected from various agencies and organisations (original & secondary sources).

**Organisation of the thesis:**

The thesis is organized into seven chapters. The first chapter is the Introduction, which introduces the topic and initiates the discussions of the theme as elaborated upon in the main body of the monograph. The second chapter describes the meaning and concepts of human rights where the definitions given in the U.N. Charter and by some other jurists have been discussed. The third
chapter examines the human rights in the international perspective. It covers the position of human rights from ancient period to modern period. An attempt has also been made here to examine the provisions of the human rights in the regions like, European Convention, African Charter, and American Convention etc. The Universal Declaration of Human Rights (1948), various Covenants and Conventions are also discussed in this chapter. The fourth chapter is centered around the discussion on human rights in India from ancient period to the contemporary period. The problems and issues related to human rights in connection with the police, prison, women, child, and environment have been the focus of the chapter five. The aspects of the enforcement of human rights have also been elaborated upon in this chapter. In the sixth chapter the Judicial Approach towards human rights has been discussed. In this chapter the guidelines issued by the various Courts have also been analyzed. The chapter seven of this monograph is in form of the Conclusion. It is in form of the summing up of the findings in earlier chapters of the monograph and the suggestions thereon towards the problem of human rights.