Chapter I

INTRODUCTION

1.0.0 INTRODUCTION

Role of Police – Definition: The role of police is scientific method of investigation, the avoidance of third degree methods efficiency in professionalism and to act as a protector and saviour of the community.

The basic role of police functions as a law enforcement agency and renders service to law.

A welfare state is to be a police state only protection of law and order is the main function of the state. This function is carried out with the help of police. This is regarded as a sovereign function even today. This function by the state is considered as the most important and fundamental. The state has to implement many measures for the benefit and welfare of the people.

The police in a democratic polity perform multiple and complex tasks towards this objective, the police have to be an effective organisation for the prevention, detection and investigation of crime, maintenance of law and order, protection of lives, liberties, and honour and possessions of the people, to bring offenders to justice and to render honest and impartial service of the people. However, the changing internal security scenario has added a new dimension to the tasks of the police and brought the police force closer to the center. State of governance within the increasingly tentative internal security situation in large parts of the country consequently, it is an urgent imperative to
secure a police organisation that is structurally cohesive functionally competent and operationally oriented to fulfil the wide ranging goals of the organization in providing efficient as well as qualitative services to the people in performing this, the police must maintain highest standards of integrity professionalism and service orientation while acting within the framework of the constitution and laws of the land.

The police in India have to perform a difficult and delicate task, particularly in view of the deteriorating law and order situation, communal riots, political turmoil, student unrest, terrorist activities, and among others the increasing number of underworld and armed gangs and criminals. Many hard core criminals like extremists, the terrorists, drug peddlers, smugglers who have organized, gangs, have taken strong roots in the society. It is being said in certain quarters that with more liberalization and enforcement of fundamental rights, it would lead to difficulties in the detection of crimes committed by such categories of hardened criminals by soft peddling interrogation. It is felt in those quarters that if we lay too much of emphasis on protection of their fundamental rights and human rights. To deal with such a situation, a balanced approach is needed to meet the ends of justice.

The administrative law it is very significant to the role of police in maintaining the law and order in the context of a welfare state where human rights are given highest importance chapters V and VI of the Andhra Pradesh Police Manual enumerates the following on the important powers and duties of police officers.

Let 100 criminals escape but not one innocent person be punished the provision of constitutional fundamental right of the police law.
The police is a name instead of a place, the crime preventor.

No crime without punishment.

No punishment without law.

Above two statements are in the beginning of ancient time. The man can observe and learn from animals and birds. The view of top talent is a crime created and developed. For example, the lion killed and eat some other animals, the birds killed and eat some other insects, the eagles killed and eat some other snakes and insects, etc., the safety of the people is the supreme law the sovereign power of police, the safety of the state is the supreme law the sovereign power of police, police is the flesh of the law, police is the blood of the law, police is the nerves of the law, police is the backbone of the law, police is the eye of the general public, police is the protector and saviour of the community.

**Role of Indian Police and Human Rights:** In a well-ordered democracy and welfare state the police is supposed to be a disciplined force trained to uphold the law and enforced democratic institution to function on constitution lines. In India the British colonial administration introduced a police system primarily to protect and defined the establishment. Conceived and structured as a staunch ally and the establishment spawned by it, the police system established by the act of 1861 matured in time into a veritable colonial law-and-order force. A sort of police raj did surely take shaped by 1947, where the police was a major player in the ordering of rural and urban society, in the suppression of political opposition and in consolidation of state control. Since independence the need for thorough reform has been felt and urged not only by civil society and academic observers but by the government itself. Recently once again the
government has expressed its readiness to replace the archaic 1861 Police Act with a new law and to increase accountability and upgrade procedures to handle every day crime. Earlier initiatives like the national Police Commission in 1979, the Vohra Commission 1993, the Ribeiro committee 1998, the Padmanbhaiah Committee 2000 and the Human Right Commission have advocated this reform. But nothing has happened. Why it is so, and what are the emerging trends in the police system of India in the absence of such reforms are issues of serious concern for all those interested in the working and consolidation of democracy in India. Fortunately some of the senior police officer, former and present, themselves has shown interest in the urgent need for reforms. The book under review by a former senior police officer is an example of such a senior concern. Police and Politics in India, written by Kripal Dillion, a former senior police officer, is as a social science analysis of the working of the police in India in a wider perspective taking into account the historical evolution of the police system in India, the social fabric in which it works, the rules and regulations that determine its structure and government its processes, the political atmosphere that influences and limits its working and behaviour. The author traces the evolution of the Indian Police structured as a staunch ally and defender of the British rule and the establishment generated by it and latter becoming the protector of law and order and defender of citizens rights in the welfare state of independent India, The author, rather than simply analyzing the police organization and its style of functioning, takes into account the social and political environment in which it has to work, analyses the whole administrative structure and legal system of the polity and looks into that the working of the police at the state and center levels. Tracing the process of transfer of the administrative and police system from a colonial coercive state to an independent welfare state, the author finds that no change was made in the bureaucratic and police structure. Accordingly, unlike the police in
mature democracies, the Indian police continue to be answerable to civilian bureaucrats, both in the district and at the state levels, rather than to the legislature. Not only do the antiquated police acts of 1861 remain in force, the colonial system of criminal justice too survives in full measures decades after the new constitution came into force. In fact, the gulf between the police and their police has grown, not diminished. The police are now more wary, more distrustful and more alienated in respect of the police.

The concept of human rights has come the declaration of American independence in 1776. The Universal Declaration of Human Rights which was adopted on 10th December, 1948. Human Rights in India Related issues were created by social and religious movements in India during the 18th and 19th centuries. The abolition of sati (1829) the formation of the torture commission in the Madras Presidency in 1855, introduction of widow remarriage by legislation (1856), and prohibition of child marriage (1929). The protection and preservation of Human Rights from the very basis of the human civilization. Right to decent life, protection from ill health and unemployment, freedom of expression, right to education, social security and others many rights. These rights are inherent to every individual and for this reason it is called Human Rights, Human Rights are very much essential for a good and qualitative human survival liberty of the individual and respect for his dignity. These principles have been enshrined in the fundamental rights. The constitution of India has made provision for a specific fundamental rights that a citizen cannot be compelled to be a witness against himself the Indian Police act, under which the entire police organization in India derives its legitimacy and the policemen their powers of function, prohibits unwarranted personal violence by police officers to any person in police custody. Their punitive procedures, both administrative and judicial, in case of complaints of custodial violence.
violence is anathema in any civilized society. It is ironic to see that whereas the state is
the guarantor and protector of human rights, most of the cases are registered against the
state itself, which concern the violence of human rights. The image of the police in public
mind is not much different from that in the British period, when it was used to suppress
the people with an iron hand. People still perceive the police as brutal, corrupt and
inefficient. In fact the police have shown all the three faces, i.e., as a savior, a victim and
an abusing force, in the domain of human rights violations in our country. The observance
of human rights by the police has already become mandatory by law and they have no
choice in the matter. Any violence will invite legal action and punishment. This issue
basically involves a question of values and ethics. The British policeman, nicknamed
Bobby, has earned the reputation of being extremely civil, courteous and well mannered.
His Indian counterpart can do the same provided the officers in uniform become the
forefront of positive values. The NHRC has been doing commendable work in
continuously encouraging the police forces of various states, through their high ranking
officers, in spreading human rights education. The commission also organizes and
supports various seminars aimed at making police personnel aware of the importance of
human rights. Custodial violence has attracted the attention of the number of custodial
deaths which have been reported in the media. The number of deaths in police custody
as reported to the NHRC has shown a decline in a number of states, with Bihar, Kerala,
Orissa, M.P, Punjab, Rajasthan, Tamilnadhu, Karnataka, and Pondicherry, The Human
Rights Commission recommended lots of suggestion to Indian Police. NHRC favour of
depoliticisation of the higher ranks of the police. It has suggested that frequent transfers
of the state police chief should be discouraged, police should be made less authoritarian,
yet more accountable, and the investigated branch should be separated from the law and
order handling, and thus it should be insulted extraneous pressures. The police definitely
needs to change its image, and human rights education can play a meaningful role in remodeling the image of the police.

1.0.1 Human Rights

Human rights are rights inherent to all human beings, irrespective of a person's nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. Everybody is equally entitled to human rights without discrimination. These rights are all interrelated, interdependent and indivisible. In India, there are multiple ways of protecting human rights. The parliament and the executive are entrusted with the creation and implementation of the law of the land, while the judiciary protects its execution. Besides these basic 'institutions' there are other bodies, who strengthen and enhance the existing mechanisms. Dedicated government agencies, socially inclined non-government organisations, local community groups and international co-operation agencies in fact provide the bulwark of human rights protection across the globe.

1.0.1.1 Concept of Human Rights

The modern concept of human rights developed in the aftermath of the Second World War. The phrase "human rights" is relatively modern, its intellectual foundations can be traced through philosophy and time honoured concepts of natural law and liberty. Respect and realization of human rights requires evolving a culture that is more sensitive to the basic needs of every human being. It respects the need for ensuring to everyone justice, social, economic and political, and provides fair and equal opportunities for growth and development to every individual and group of people. It protects everyone from being subjected to the whims of State and its arbitrary exercise of power and use of force by its agencies.
1.0.1.2 Protection of Human Rights

Human rights in simple language may be categorised as the fundamental rights to which every man or woman living in any part of the world is entitled by virtue of having been born as a human being, the rights that are required for the full and complete development of human personality. Human rights are derived from the dignity and worth inherent in human person. The Courts in India have been recognising and enforcing the human rights as natural rights of mankind or as Constitutional mandates or as rights of an Indian in an independent polity\(^1\).

Generally speaking, human rights are regarded as those fundamental and inalienable rights, which are essential for life as a human being. There is, however, no consensus as to what these rights should be. Human rights may be interpreted as being different, according to the particular economic, social and cultural society in which they are being defined. Human rights have so far escaped a universally acceptable definition, presenting a problem to international regularisation\(^2\).

Human rights represent claims which individuals or groups make on the society. They include the right to freedom from torture, the rights to life, inhuman treatment, freedom from slavery and forced labour, the right of liberty and security, freedom of movement and choice of residence, right to fair trial, right to privacy, freedom of thought, conscience and religion, freedom of opinion and expression, the right to marry and form a family, the right to participate in one's government either directly or indirectly or through freely elected representatives, the right to nationality and equality before the law. These rights cannot be compromised universally. These rights are natural because they were derived from nature and could not be legally alienated by the ruler.

\(^{1}\) Gurbax Singh, Commentary on the Protection of the Human Rights Act

Definition: The definition of the term still eluded all. In India, the Protection of Human Rights Act, 1993 defines human right as:

"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.

The United States defined human rights in a policy document in 1978 and said:

"Freedom from arbitrary arrest and imprisonment, torture, unfair trial, cruel and unusual punishment and invasion of privacy. Right to food, shelter, health care and education and freedom of thought, speech assembly, religion, press, movement and participation in Government."

Louis Henkin, a professor and Western Scholar defined human rights as "Claims asserted and recognised as of rights…. Against society as represented by government and its officials. In another definition, an International Legal Scholar, E. Donald Elliot, stated that human rights are "an opportunity guaranteed by the State to its citizens to enjoy the societal benefits and values existing in the given society".

The concept of human rights falls within the framework of constitutional law and International law. For this purpose, it has been identified to "defend by institutionalized means the rights of human beings against abuses of power committed by the organs of the State and at the same time to promote the establishment of human living conditions and the Multi-dimensional development of human personality".

1.0.1.3 Natural Rights as Human Rights

The appeal to equate natural rights with human rights is ordained in Vedas. The philosophy envisaged in Rig Veda commands that all human beings are equal and that

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3 Sec. 2(d), Protection of Human Rights Act, 1993.
conduct is just which is based on the principles of equality. Vedic ethics idealised an equality of treatment. Atharva Veda ordains that all human beings are equal and that conduct is moral which is based on the principles of equality.

The philosophy of human rights appears to have its existence in the domain of natural law. According to the philosophy of natural law jurists, the natural law denotes natural justice, an instrument which can harmonise the whole mankind and bestow happiness essential for good living of a society. To the Greek philosophers, the Sophists, Socrates, Plato and Aristotle, natural law is both a way of living as well as thinking. Their philosophy has been that natural law enables a man to realise good life that is living according to virtue. Aristotle argues that the philosophy of human rights derives its strength from the principles of natural law. Sophists also focussed on ethical and moral values to prepare the young men of Athens to be efficient citizens. Grotious has a strong conviction that natural law is binding one overrules all other laws. They believe that natural law predicate men to recognise divine will in human affairs. Man availing himself of natural law automatically participates in the wisdom of God. Grotious observes that by the inclusion of natural law in a legal system, it becomes the link between the minds of the men and the mind of God. Christ himself said "Thou shalt love thy neighbour as thyself. All things, therefore, whatsoever you would that man should do to you, do you also to them"

Similarly, St. Thomas Aquinas (1225-1274), the first eminent theologian, in his famous work Summa Theological considered law as a means to end and therefore stresses that man ought to follow the divine law as embodied in Ten Commandments which is

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6 D. Entreves, Natural Law, 78
repository of all divine revealed wisdom contained in the scriptures. He believes that precepts of natural law teach us to live honourably; to injure no one; and to give every man his due.

The natural law contents in Hugo Grotious, Thomas Hobbes, John Locke, Rousseau and Immanuel Kant strongly propagate the existence of human rights securing of life, property and happiness and subjects by the social institutions. Thus the principle of natural law hammers out a charter of human rights to be protected as the basis of survival of the human being. The crux of the natural law philosophy is that it makes the life, liberty and property the cardinal rights of man, which greatly dominates and influence the future course of the development of human right philosophy the world over.

1.0.2 Recognition of Rights for all Human beings

The human rights are the modern name for what had been traditionally known as natural rights in India, Greece, Rome and elsewhere. Notwithstanding all the polemics of natural law jurists, the condition of man all over the world remained greatly unchanged. He was still in the shackles though he had known of the "natural rights of man" through the philosophy of natural law.

The situation changed with the dawn of Renaissance - the intellectual revival which inundated Europe with new ideas of all the spheres of human life. It opened a new vista in the era of human life. The result was that even the king in England was forced to sign Magna Carta (the great charter of human rights) said to be the first mile-stone on the road to the liberties of people of England in 1215 A.D. The philosophy of human rights was added and strengthened specifically after the introduction of Magna Carta. The
Magna Carta was followed by the Petition of Rights, 1627 and the Bill of Rights, 1639. The Bill of Rights may be said to be the third charter of human rights which assured the natural law rights to the people.

Events in England profoundly affected France and other countries of the Continent with the result that France Declaration of the Rights of Man came into existence in 1789 with the prime objective to resist oppression on man. Declaration not only set out a number of human rights..., but clothed them in political philosophy with the words "the main aim of all political associations is the protection of natural and imprescriptibly rights of man.... liberty, property, security and resistance to oppression." 8

In American Continent, the Charter of New Plymouth of 1620 expressed the principles of human rights. Similarly, the Declaration of Independence in the United States of America firmly resolved to hold the truth of existence of human rights to be self-evident declaring that all men are created equal; that they are endowed by the creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government laying its foundation on such principles, and organising its powers in such forms, as to them shall seem most likely to affect their safety and happiness.... but when a long train of abuses and usurpations, pursuing invariable the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government and to provide new guards for their future security. 9 It is in this spirit that Western nations too are making hue and cry for protection and promotion of human rights. 10

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8 Z. Chaffee, Documents Fundamental Human Rights, 239 (1951).
10 D. Entreves, Natural Law. at 13.
The outbreak of Second World War brought a strong conviction of urgent need to safeguard the political and civil rights of individual everywhere, and to provide for economic and social security and determination to safeguard such rights. The appalling atrocities during the War led to strong movement for the international protection of fundamental human rights. The Charter of the United Nations, the legal child of World war, represents a significant advancement so far faith in and respect for human rights is concerned. It contains a numerous reference to human rights. The rights of individual were made an international concern. Human rights are mentioned for the first time in an international treaty (not counting the treaties for the protection of minorities concluded after the First World War, which related to the rights of special groups but not to human rights in general) because the drafters of the Charter were looking behind the facts of war to its causes, that is to say, to the existence of conditions which makes the wars possible.

The present day journey of human rights had started after the Second World War and first cohesive effort by the International Community for the promotion and protection of human rights was their agreeing to the Charter of the United Nations in 1945, basically aimed at saving this world from the scourge of war which had brought untold sorrow to the human kind and re-affirming faith in fundamental human rights, in the dignity and worth of human persons, in the equal rights of men and women and of nations large and small, which culminated in the drafting of various human rights instruments, such as, Universal Declaration of Human Rights, International covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, etc. and setting up of institutions like Commission on Human Rights, etc.

The provisions concerning the human rights run throughout the U.N. Charter "like a golden thread". There are as many as seven references— in the Preamble; among
purposes of the U.N. [Art. 13]; among the responsibilities of the General Assembly [Art. 13(2)]; among the objectives of the International Economic Co-operation [Art. 55(c)]; among the functions of the Economic and Social Council (ECOSOC) [Art. 62(2)]; as a responsibility of one of the Commissions of Economic and Social Council (ECOSOC) [Art. 68]; and among the objectives of the Trusteeship system [Art. 76(c)].

A pledge to co-operate in promoting at least implies a negative obligation not so to act as to undermine human rights. When the member countries felt that they have greatly weakened the contents of Charter clauses, so an attempt was made by drawing up in 1948 the "Universal Declaration of Human Rights and Fundamental Freedoms". This was the First step in formulation of an International Bill of human rights.

1.0.3 The International Bill of Human Rights

The International Bill of the Human Rights comprises of the following:

i. The Universal Declaration of Human Rights, 1948

ii. The International Covenant on Civil and Political Rights, 1966

iii. The International Covenant on Economic, Social and Cultural Rights, 1966

iv. The Optional Protocol to the International Conference on Civil and Political Rights, 1966

On the recommendation of the Third Committee, the General Assembly unanimously adopted the two International Covenants, namely, the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights on December 16, 1966. While the Covenant on Civil and Political Rights, 1966 was adopted by 106 votes to nil, the International Covenant on Economic, Social and
Cultural Rights was adopted by 105 votes to nil. The General Assembly also adopted an Optional Protocol to the International Covenant on Civil and Political Rights, 1966, by 66 votes to 2 with 38 abstentions. After 23 years, i.e. in December, 1989, the General Assembly adopted yet another Protocol i.e., Second Optional Protocol to the International Covenant on Civil and Political Rights, on December 15, 1989.

The keystone of the two covenants is the Universal Declaration of Human Rights which was adopted by the General Assembly on 10th December, 1948. The Covenants generally elaborate on the rights set forth in the Universal Declaration of Human Rights 1948. After 18 years of the approval in 1948 of the First part of the United Nations programme for the protection of human rights, the non-binding Universal Declaration of Human Rights, on December 16, 1966, the General Assembly approved three agreements designed to establish the global system of enforceable treaty obligations with respect of the fundamental human rights. These are International Covenant on Civil and Political Rights, 1966; the International Covenant on Economic, Social and Cultural Rights, 1966 and the Optional Protocol to the International Covenant on Civil and Political Rights, 1966.\(^\text{11}\) These agreements are the second part of the "International Bill of Rights" proposed at the San Francisco Conference.

The International Bill on Human Rights, a major undertaking, which began at the inception of the organisation, entered into force on 23rd March, 1976 both the Covenants were adopted by the General Assembly on December 16, 1966. They were opened for signature on December 19, 1966 each of the covenant required 35 ratifications or accessions before coming into force. The optional protocol to the International Covenant


China had also signed the Covenant on Economic, Social and Cultural rights. On 28th February, 2001 China ratified the Economic Covenant. On 27th March, 2001, China formally informed the U.N. that it would abide by the treaty but made it clear that it opted out of a clause allowing workers to form independent trade workers.

It may also be noted that the second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition on Death Penalty was adopted on December 15, 1989. As provided by Article B, Paragraph 1, it was to come into force three months from the date of the deposit of the tenth instrument of ratification or accession. This requirement was fulfilled on July 1, 1991 and therefore the Second Optional Protocol came into force on July 11, 1991.

1.0.4 Four Generations of Human Rights

Generally two categories of human rights are recognised. The rights that are required to ensure "freedom from fear" and "freedom from hunger", are said to be human rights. They represent two generations of human rights: the first one are civil and political rights (representing 1st generation) ensuring 'freedom from fear'; the second are
economic, social and cultural rights (representing 2nd generation) and ensuring freedom from hunger. However, a 3rd generation of human rights have also come up, although still are in formation, and this 3rd generation of human rights include: the right to political, economic, social and cultural self determination, the right to economic and social development, the right to participate in the benefit from "the common heritage of mankind" (shared earth- space resource, scientific, technical and other information and progress and cultural traditions sites and monuments). The above three human rights of the third generation reflect the emergence of third world nationalism and its demand for a global redistribution of power, wealth and other important values. Three other rights of the third "generation are the right to peace, the right to a healthy and balance environment and the right to humanitarian disaster relief. The third generation of human rights are also said to be solidarity rights. An additional fourth generation of human rights had been advocated by Prof. A.K. Kaul, relating to trade related human rights under World Trade Organisation (WTO) regime. They are concern with trade measures as feasible instruments to enforce human rights. Thus globalisation and liberalisation have certainly increased economic development but there are no corresponding increases in human rights. The direction of the World trade, investment and finance along with the role of International Monetary Fund (IMF) and International Bank for Reconstruction and Development (IBRD) can improve the implementation of human rights. This provides for the necessity of interpreting trade rules in conformity with human rights obligations and values. Trade related human measures can be imposed on specific human rights violations (child labour or protection of public morals, protection of human, plant or animal life, health, prison, labour and conservation of exhaustible natural resources or earth environment or general human rights). Hitherto, International Trade Law and International human rights have developed in splendid isolation even though in both sets,
the law has the same goal, raising higher standards of life. The emerging fourth generation of human rights would require international human rights compliance through effective monitoring and handling of individual complaints.

1.0.5 Right to Life: Jurisprudential Foundations of Human Rights

Doctrine of human rights is a product of natural law theory, evolved since ancient times, which paved the way for recognition of individual identity and autonomy. Advancement of civilizations and progress of societies was required to keep pace with the changing time and therefore, the doctrine of rights has also been changed and transformed with the changing time. Majority of natural lawyers did incorporate rights as an integral part of their theory. Natural law theory though underwent a change but few principles of it remain constant, inter alia inalienable rights of individual.12

Jurisprudential underpinnings of right to life are visible in natural law theory of Prof. John Finnis. His description of basic common goods as an essential and necessary component of a legal system and along with them, basic methodological requirements furnish a foolproof theoretical structure of right to life.13 According to him these basic common goods are so essential that no legal system could remain immune from their incorporation or legal system would not be a legal. They are so basic or fundamental that their legality or validity could not be determined on the basis of any other external authority or touchstone. It meant, they are not only premolar, but also self-evident. In other words, basic common goods including the right to life impose certain limitations or restrictions upon the competent sovereign legislative body, not to either take away or abrogate them.14 The fundamental value rooted inherently in these goods enables

individual not only to exercise or enjoy his freedom of life but make his life more meaningful and prosperous. Though these goods are not placed in a hierarchical order, but primacy is attached or conferred on the basic goods of life. Prof. Finnis has branded right as not natural but human rights and amongst them few have been labelled as absolute one.

In the writings of another natural lawyer, Prof. John Locke, has been incorporated positively in the American Constitution. The V amendment of it contains the provision that "no person shall be deprived of his right to life, personal liberty and estate without due process of law". The categorical, concrete and positive insertion of this provision in the Constitution of USA is an express instance of positive incorporation of natural law theory into a positive and supreme law or a positivisation of natural law.\(^{15}\) The beauty of the V amendment lies not only in inclusion of right to life and personal liberty but, it lies in the words of "due process". It signifies naturality of rationality and its positive incorporation in the Supreme document. The fundamental tenet of the inclusion of the term places stipulation or limitation upon the exercise of a power in an arbitrary or unreasonable manner by the sovereign authority.\(^ {16}\) The transformation of the doctrine from natural to fundamental and fundamental to human is a matter of intrinsic value, significance and utility attached with it.\(^ \phantom{^17}\)

Prof. John Rawls says that human right do not depend on any particular comprehensive moral doctrine, they express a minimum standard of well ordered political institutions for all peoples, who belong, as members in good standing, to a just political society of people. Human Rights are a special class of rights designed to play a special role in a reasonable law of people for the present age. They are thus distinct from

\(^{17}\) Anand Mehta, Right to Life and Personal Liberty (1999) at page 45.
constitutional rights, or the rights of democratic citizenship or from other kinds of rights that belong to certain political institutions, both individualist and associational. They are a special class of universal application and hardly controversial in their general intention. According to him human rights have three roles to perform:

1. They are necessary conditions of a regime's legitimacy and of the decency of its legal order;
2. They are also sufficient to exclude justified and forceful intervention by other people's say by economic sanctions, or in grave cases, by military force; and
3. They set a limit on pluralism among peoples.

These roles of human rights outlined by Prof. Rawls demonstrate an intrinsic and basic value of them. The first two roles to be played or performed by human rights are closer to Prof. Finnis version of natural law and basic common goods. Otherwise, human rights are essential conditions, which are necessary for all human beings. The similarity between the two approaches espoused by two different jurists depict or connote and accord new dimension to the doctrine of rights or human rights inter alia right to life and personal liberty. Role to be played by human rights negatives interference, if any, on the part of the State, and makes a life of individual more autonomous or dignified. Thus, right to life and personal liberty has become quite essential for all positive legal orders and moreover to liberal democratic societies. These jurisprudential foundations are sufficed to initiate a further enquiry of right to life as guaranteed under Art. 21 of the Indian Constitution, and interpreted by the Supreme Court.\textsuperscript{18}

The constitutional command of right to life guaranteed under Art.21 pervades not only in Part III which encompasses the Fundamental Rights but it transcends Part IV as

\textsuperscript{18} Sube Singh Vs. State of Haryana, AIR 2006 SC 1117.
well as IV-A (Directive Principles and Fundamental Duties). This all pervasiveness of Right to Life has occurred and occupied a prominent place during last two decades in India. The total transformation witnessed by this, was a result of several challenges and hazards faced by it. Since the inception of the Constitution, the stereotype and orthodox meaning or interpretation accorded by the judiciary at initial period has narrowed down not only the content but even the intent of the constitutional framers. Right to life or personal liberty, does not mean merely the freedom from torture or abuses but it includes multiple conditions, which are essential for human life. There were certain attempts in the past not only to narrowly interpret but to curtail or abrogate Right to life and personal liberty guaranteed by Indian Constitution.\textsuperscript{19}

The new vista of human rights which has been developed in the recent past globally, and incorporated in all municipal legal systems has given the new dimension and approach to the said right. The horizons of right to life have been broadened to the extent that other fundamental rights are not only linked or forged with it, but at the same time new brand or variety of rights have been read into it. The apex court in India has fashioned itself as a forum of not only to deliver a justice and pay merely a lip service but it has become a forum of articulation, remoulding and reinventing the mechanism and the rights to deliver justice to millions of starved and shackled Indians.

1.0.6 Human Rights and Human Values

Ever since the beginning of civilization, two conflicting view points, rule of men or rule of law, have competed for acceptance. Although each school of thought has not lacked in its votaries, in the aggregate the thinking has been in favour of the rule of law. On occasions we have slipped back into Government by will of men only to return again

\textsuperscript{19} Sana Chandi Oal Committee Vs. State of Maharashtra, AIR 2005 SC 635.
sadder and wiser to the rule of law when hard facts of human nature demonstrated the selfishness and egoism of men and the truth of the dictum that power corrupts and absolute power corrupts absolutely. It is in this context that the demand for civil liberty and human rights has acquired great significance.\textsuperscript{20} One of the major tasks which was faced by the framers of constitutions in democratic countries is how to reconcile the needs of an effective Government with the preservation of the rights of the individuals. Firmness in administration is one of the great imperatives of a good Government; and for a week Government, as observed by Burke, is the worst tyranny. A constitution must, therefore, arm the Government with enough powers to exercise control over forces which threaten the even flow of the life of the community and create problems of law and order. Parallel to the awareness of the need of arming the Government with great powers, there has also been the growing awareness of the desirability of fostering and protecting individual rights. According to the theory of social contract, some aspects of which have now been discredited, human beings surrendered their freedom in return for the blessings of Government.\textsuperscript{21} The blessings of the Government would lapse into tyranny of Government unless it is accompanied by a recognition that there are certain basic rights which are possessed by all citizens, not only good citizens but also bad citizens. These are the rights which are inherent in all citizens because of their being human. These are the rights which are inalienable because the enlightened conscience of the community would not permit the surrender of those rights by any citizen even of his own volition. These are the rights which are inviolable because they are not only vital for the development and efflorescence of human personality and for ensuring its dignity, but also because without them men would be reduced to the level of animals.\textsuperscript{22}

\textsuperscript{20} Louis Henking Protection of Human Rights: Inter-disciplinary Perspectives, 218 (1996).
\textsuperscript{22} Blackstone, Personal Liberty and Other Human Rights: Community Expectations, 175 (1982).
The question then is whether a charter of rights cramps the powers of the Government and thus creates difficulty for the functioning of an effective Government. The question is linked with the question as to why and for what purpose we need a Government. Whatever might have been the notion in the primitive stage of mankind and during the subsequent periods of history, the modern view is that the end of a good Government is to bring about security, welfare and happiness of the people. Of all the various forms of Government, democratic Government with a bill of rights corner nearest to the ideal for the attainment of those objectives. There can indeed be no genuine democracy where the citizens do not enjoy basic rights and civil liberties like freedom of expression, equality before law and a provision that no one shall be deprived of his life or liberty without the authority of law. Experience also tells us that in the absence of these attributes of a State, we can have no freedom from fear. Instances have, however, not been lacking when, despite a bill of rights, democratic regimes have turned into authoritarian Governments. Quite often this happens when persons elected through democratic process find powers slipping from their hands because of some, exigencies of the moment or because of their dwindling popularity on account of the failure of their policies. It is in such situations that people elected through democratic process look for alibis and seek extraordinary powers to continue in office as the imposition of internal emergency in India. Such moments can well prove to be the twilight of freedom, civil liberties and human rights. Freedom, civil liberties and human rights call for an enlightened nation and a vigilant people. Loss of these values inevitably follows lack of vigilance. Experience should teach us to be on the guard against insidious erosion of liberties and covert curtailment of rights. The people, it is said, never give up their liberty but under some illusion. Men born to freedom are naturally alert and would be immediately called to action to repel frontal assault on their liberties and rights by evil-
minded persons. The greatest danger is when liberties are nibbled away in bits and parts and rights are abridged slowly and gradually under cover of objects ostensibly beneficent and by men apparently well-intentioned.

In Smt.Sumakiran Mallena v. Secretary Medical and Health, the court held that the donation of organ by the husband cannot be objected to by wife on the ground of her fundamental right to life. There is in the world of today a high-powered salesmanship in ideas. The art of propaganda had by no means its origin in this century, but during the Second World War it acquired new dimensions. By raising a smoke-screen of catchwords, by whipping up our passions on some monetary issues, an attempt is made quite often to cloud our thinking and hypnotise our mental faculties. Slogans are coined and euphemistic expressions created to confer respectability upon and seek justification for acquisition of more powers. It is at moments like these that we need the sentinels to make us aware of the danger which underlines the disposition to take the immediate for the eternal, the transitory for the permanent and the ephemeral for the timeless. This necessarily calls for a determined resistance to the hypothecation of the thinking process. It also postulates a free trade in ideas. No one can underrate the importance of this trade for the health and growth of the society. It is for the fraternity of the Press, the members of the Bar, the legislators and the enlightened sections of the community to make a vital and significant contribution in the carrying on of this trade. And it is also for them to act as watchdogs and sentinels on qui vive of cherished values. Unless the enlightened sections of the community are prepared to discharge the above function and undertake that role, even at the close of some risk, the future of civil liberties and human rights would remain bleak.

23 AIR 2008 Note On Cases (NOC) 374 (A.P.).
1.0.7 Emerging Challenges

The doctrine of natural law was a direct progenitor of the concept of human rights. Natural law created an awareness of natural rights. Various thinkers discerned the inherent and sacred rights of men in the divine law applying to human beings. Natural rights thus led to the formulation of human rights. The Virginia Declaration of Rights in 1776 declared that all men by nature are equally free and independent and have certain inherent rights of which they cannot by any contract deprive or divest posterity. The American Declaration of independence in the same year affirmed that it was self-evident that all men are created equal and they are endowed by their creator with certain inalienable rights among which are life, liberty and the pursuit of happiness. The French Revolution not only resulted in the overthrow of despotic rule and the establishment of democratic institutions, it also brought an awareness of the sanctity of personal liberty and other human rights. The French National Assembly in 1789 resolved to lay down in a solemn declaration the natural, inalienable and sacred rights of men.

The tyranny of the Nazi regime created a new awareness of the necessity of Human Rights. The Universal Declaration of Human Rights was adopted by the General Assembly in 1948. It was an historic event of the profound significance as has been hailed as one of the greatest achievements of the United Nations.\(^{24}\) It was a most eloquent expression of hope by a word emerging from the most devastating war in the history of human race.\(^{25}\) The experience gave the Universal Declaration a momentum that is reflected in the boldness of the document destined for a world of peace where the right to live in peace has become a reality for all.

\(^{24}\) Sir H. Lauterpatcht, International Law and Human Rights, p. 394.

The Universal Declaration which was originally conceived as a statement of objective to be achieved by Governments and as such, not part of binding law, has now been accepted by so many States to be an international standard against which their behaviour is measured. Indeed the Universal Declaration has become legally binding constituting an authoritative interpretation of the Charter and as new rules of customary international law binding on all States. To some extent at least the Declaration has by custom recognised, as laying down rules binding upon States.

While the United States of America accuses other nations of not adhering to human rights, it has so far failed to ratify the International Covenant on Economic, Social and Cultural Rights, 1966. Only a year back it has ratified the International Covenant on Civil and Political Rights, 1966. As regards the Economic Covenant, the U.S. still maintains that the rights covered under the Covenant are not Human Rights. This is despite the fact that so far 138 States have become parties to this covenant: Other conventions on human rights which the U.S. have failed to ratify are: International Convention on the Suppression and Punishment of the Crime of Apartheid, 1973; International convention on the Elimination of All forms of Racial Discrimination, 1965, Convention Against Torture and Other Inhuman or Degrading Treatment or Punishment, 1984; and the Convention on the Elimination of All Forms of Discrimination Against Women, 1979.

After making a global survey of 161 countries, Amnesty International has said that the U.S. is one of the used biggest violators of human rights. The forms of torture in prisons and excessive force by police in America are almost unparalleled. The Amnesty

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International has said, "The world has witnessed Human Rights violations of allies being greeted with silence while of declared enemies were met with public condemnation sometimes backed with action." The U.S. is mainly concerned with the safety of Americans and mostly acts on the principle of 'might is right'. The notorious case of beating of a black motorist in March, 1991 by four Police Officers of Los Angeles brought into limelight the use of excessive force. The examples of physical brutality, unjustified shootings, ill-treatment of jail inmates are numerous yet frequently it does not fail to censure other countries including India, whose record of human rights is far better than America's for alleged violations of human rights. Americans therefore, deserve to be reminded frequently the sayings: Examples are better than precepts and that one who lives in a house of glass should not throw stone upon others. As compared to America's belated accession to the Convent on Civil and Political Rights, 1966, India acceded to International Covenant on Civil and Political Rights, 1966, as well as International Covenant on Economic, Social and Cultural Rights, 1966 on March 27, 1979.²⁷

1.0.8 India and Protection of Human Rights

In India, the desire for civil rights struck deep roots in the 19th Century. It was implicit in the formation of the Indian National Congress. Resolutions passed at successive sessions of the Congress stressed the importance of the rights to personal liberty and other human rights.

The Indian National Congress, in its forty-fifth session, held at Karachi in March, 1931 had adopted a resolution entitled "Fundamental Rights and Economic Programme" in which it was declared that any Constitution which may be agreed to, should provide,

inter-alia, for the fundamental rights enumerated in the resolution. It also provided for religious neutrality on the part of the State, adult suffrage, freedom of labour from serfdom etc. The words "human rights" were no where used in the resolution but it was almost a charter of human rights. The texts of the resolution are reproduced below:

(i) **Fundamental Rights & Economic Programme:** (Adopted by the Indian National Congress at its Forty-fifth Session held at Karachi in March, 1931.) “The Congress is of opinion that to enable the masses to appreciate what ‘Swaraj’, as conceived by the Congress, will mean to them, it is desirable to state to position of the congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declares that any constitution which may be agreed to on its behalf should provide, or enable the Swaraj Government to provide, for the following:

1. Fundamental rights of the people, including, (i) freedom of association and combination; (ii) freedom of speech and of the press; (iii) freedom of conscience and the free profession and practice of religion, subject to public order and morality; (iv) protection of the culture, language, and scripts of the minorities; (v) equal rights and obligations of all citizens, without any bar on account of sex. (vi) no disability to attach to any citizen by reason of his or her religion, caste or creed or sex in regard to public employment, office of power or honour, and in the exercise of any trade or calling; (vii) equal rights and obligations of all citizens in regard to public roads, wells, schools and other places of public resort; (viii) right to keep and bear arms in accordance with regulations and reservations made in that behalf; (ix) no person shall be deprived of his liberty nor shall his dwelling or property be named, sequestered or confiscated save in accordance with law.
2. Religious neutrality on the part of the State

3. Adult suffrage.

4. Free primary education.

5. A living wage for industrial workers, limited hours of labour, healthy conditions of work, protection against the economic consequences of old age, sickness and unemployment.

6. Labour to be freed from serfdom or conditions bordering on serfdom.

7. Protection of women workers, and especially adequate provisions for leave during maternity period.

8. Prohibition against employment of children of school going age in factories.

9. Right to labour to form unions to protect their interest with suitable machinery for settlement of disputes by arbitration.

10. Substantial reduction in agricultural rent or revenue paid by the peasantry and in case of uneconomic holdings exemption from rent for such period as may be necessary, relief being given to small Zamindars wherever necessary by reason of such reduction.

11. Imposition of a progressive income-tax on agricultural income above a fixed minimum.

12. A graduated inheritance tax.

13. Military expenditure to be reduced by at least one half of the present scale.

14. Expenditure and salaries in civil departments to be largely reduced. No servant of the State, other than specially employed experts and the like, to be paid above a certain fixed figure which should not ordinarily exceed Rs. 500 per month.

15. Protection of indigenous cloth by exclusion of foreign cloth and foreign yarn from the country.
16. Total prohibition of intoxicating drinks and drugs.

17. No duty on salt manufactured in India.

18. Control over exchange and currency policy so as to help Indian industries and being relief to the masses.

19. Control by the State of key industries and ownership of mineral resources.

20. Control of usury - direct or indirect.

It shall be open to the All India Congress Committee to revise, amend or add to the foregoing so far as such revision, amendment or addition is not inconsistent with the policy and principles thereof."

The second most important document in these series was the "Objectives Resolution". On December 13, 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution in the Constituent Assembly. It was unanimously adopted on January 22, 1947, i.e., at a time when the United Nations had not adopted even the Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966. The said Resolution was solemnly resolved to draw up the prospective Constitution of free India based on the principles enshrined in this Resolution. Like the earlier resolution, this resolution, too, did not mention the works "human rights" in the draft but it contained almost all the human rights which subsequently found place in the International documents, such as, social, economic and political justice to all, equality of status, of opportunity, and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action. However, all these guarantees were subject to law and public morality. It provided, inter alia, adequate safeguards to the minorities, backward and tribal areas, and depressed and other backward classes. The texts of the resolution are reproduced below:
(ii) **Objectives Resolution**: (Unanimously adopted by the Constituent Assembly on 22 January, 1947).

1. This constituent Assembly declares its firm and solemn resolve to proclaim Indian as an Independent Sovereign Republic and to draw up for her future governance a Constitution;

2. Wherein the territories that now comprise British India, the territories that now form the Indian States, and such other parts of India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all;

3. Wherein the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous units, together with residuary powers, and exercise all powers and functions of Government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting there from;

4. Wherein all power and authority of the Sovereign Independent India, Its constituent parts and organs of Government, are derived from the people;

5. Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political, equality of status, of opportunity, and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action subject to law and public morality;

6. Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes;

7. Whereby shall be maintained the integrity of the territory of the Republic and
its sovereign rights on land, sea, and air according to justice and the law of civilized nations;

8. This ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind."

Consequently when the Constitution was drafted, constitutional guarantees for protection of the human rights were incorporated in Part III of the Constitution. It was also provided that any law or any executive order which was in violation of the fundamental rights contained in Part III of the Constitution would be void and liable to be struck down by the Court.

(iii) Right to Life - A Fundamental Right: The Indian Constitution under Article 21 declares: — "No person shall be deprived of his life or personal liberty except according to procedure established by Law."

The right to life, though the most fundamental of all is also one of the most difficult to define and its protection generally takes the form of a declaration that no person shall be deprived of it save by due process of law or by authority of law.\(^{28}\)

(iv) Indian Judiciary and Protection of Human Rights: The emergence of the Supreme Court of India as a custodian of people's rights and a democratic, functional institution is the most significant and important development in the judicial history of independent India. It is being envisaged not as a redressal forum of elite class in the society pre-occupied with rendering merely lip service to the people. Instead, it is seen

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and perceived as a forum for raising, redressing and articulating the problems of the have-nots/deprived, oppressed, the downtrodden, women and children, environmental groups, consumer forums, victims of bureaucratic exploitations and abuse of powers and positions by persons holding high public offices. It has become a forum for the representation, articulation and protection of the basic human rights of the people vis-à-vis society.

1.0.9 Role of Police and Human Rights

Ever since civilized societies came into being, police force, in one form or other has been made to function from times immemorial. Dating back the very history of Police from ancient times, Kautilya and Yajanavalkya categorically defined the basic functions of Police as 'detection of crimes, arrest of suspicious, and protection of civil population and prevention of illegal acts'. Manu, the great Law-giver of India and an exponent in statecraft, also advocated the dire need of 'police stations even for villages'. A graphic description of the ranks of police officers, their functions, methods of extracting confession from the criminals, modes of recovery of stolen property and extermination of thieves are given in ancient literatures like Rajatarangini, Arthashastra and Yajnavalkya Smriti to quote but a few. The crystallized codification and functioning of Police administration were explained at length.

Kautilya mentions eighteen Tirthas in the Arthashastra. They were officers of the State. Some of them were responsible for police and military functions. The Danvarika was the warden of police. He was responsible for keeping strict vigilance on the management of the royal palace. The Ayuktas were a kind of village police and they were responsible to Rajukas and Pradesikas. The Prativedakas were responsible for collection of intelligence regarding the affairs of the State and those of people.29

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29 Anil Kumar Panday, Policing in Ancient India. The Indian Police Journal, April-June 1985.P.5.
With the dawn of East India Company on Indian soils there was nothing specific to pronounce as the administration of police system was left untouched till 1792 AD. Lord Cornwallis brought out certain changes in the police administration which ended in making the police force responsible to the Company. In 1860 AD a Police Commission was set up as the Darogha system failed notoriously. Consequently, the Indian Penal Code and Criminal Procedure Code were provided and enacted in 1860 and 1861 respectively. Subsequently in 1902 tremendous quantum of radical changes have been brought out by appointing a new Police Commission by Lord Curzon.

The Constitution of India provides police is a state subject, list 2 entry 2 and residuary powers are vested with the Centre. There are central police organizations while state has its own police force with different divisions and units. To quote but a few are Central Bureau of Investigation (CBI), Central Reserve Police Force (CRPF), Border Security Force (BSF), Indo-Tibetan Border Police (ITBP), Central Industrial Security Force (CISF), Railway Protection Force (RPF) and Central Intelligence Bureau (CIB).

1.0.9.1 Police Bureaucracy

Some scholars are of the opinion that the pivotal problem characterizing the Police organization is the tension mounted between the rule of law or legal order on the one hand and bureaucratic structure on the other. Jerome H. Skolnick, a proponent of this view states as follows:

"The police in a democratic society are required to maintain order and to do so under the rule of law. As functionaries charged with maintaining order, they are part of the bureaucracy tension, the operational consequences of ideas of orders, efficiency and initiatives on the one hand
and legality, on the other, constitutes the problem of police as a democratic legal organization'.

In as much as Max Weber pronounces that "fully developed bureaucracy operates in a special sense sine ira ae studio (without bias or favour)".

Some authors are of the opinion that "bureaucratization of the police may tend, in general ways, to uphold the rule of law rather than undermine it.

Police, can be outlined as a well-knit homogeneous group with a clearly defined and well established hierarchical structure. It would be worth mentioning the traits, the leadership as described parenthetically, by administrative skills as envisaged by Godde and Ralph Stogdill. The leader is characterized by a strong drive for responsibility and task completion, vigour and persistence in pursuit of goals, venture someness and originally in problem solving, drive to exercise initiative in social situations, self-confidence, and a sense of personal identity, willingness to accept consequences of decision and action, readiness to absorb inter personal stress, willingness to tolerate frustration and delay, ability to influence other persons' behaviour, and capacity to structure social interaction systems to the purpose at hand.

The styles of leadership are categorized by Lewin, Lippitt, and White are authoritarian, democratic and laissez-faire. The- authoritarian leader makes all decisions without consulting subordinates and closely controls work performance. The democratic leader is group oriented and tasks; and the laissez-faire leader takes a "hands-off" passive approach in dealing with subordinates.

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The leadership styles in bureaucratic structure as analysed and described by Anthony Downs are (i) climbers, (ii) conservers, (iii) zealots, and (iv) advocates. Climbers are strongly motivated by power and prestige needs to invent new functions to be performed by their unit, particularly functions not performed elsewhere. The bias of conservers is toward maintaining things as they are. The peculiarities of the behaviour of zealots stem from two sources, (i) their narrow interest, and (ii) the missionary-like energy that they focus almost solely on their special interest unlike zealots, advocates promote everything under their jurisdiction.\(^3\)

It is the leader who has to take his officers and men in his fold to service to community in all earnestness. There will be stress and strain in the discharge of duties due to various factors that are governing the duties of police, such as, political, communal, religious etc., But the leader has to remain impartial by exercising organizational control for efficient performance. The leader should set an example to others not only in the discharge of his duties but also in every conduct and dealings with the general public.

In the Commissionerate system, the Special Executive Magistrate's powers are vested with police which facilitate the quick disposal of law and order problem. In the maintenance of public order and tranquility in the interest of the service to community the commissionerate system has proved its worth and is blossoming in full-splendour.

1.0.9.2 The Work-Culture

Even though public apathy towards the police is demoralizing, it is an undaunted fact that the multifarious duties amidst serious complexities reservations and

\(^3\) Charles R. Swanson Leonard Territo Leadership.
compunctions, services rendered by police are immense and are really laudable. The prevention of crime, detection of crime, maintenance of public order, protection to life and property are to quote but a few examples of the grass-root level duties of police. The police functions embrace almost all the branches, units and all walks of life. In the wake of non-cooperative tendencies that are explicitly exhibited by common man, the Police is relentlessly venturing upon in rendering service to community. The peculiar problems that are faced by the policemen have been illustrated with a vivid picturesque narration by Martin Symonds: "Considering the nature of police work and the stress it places on the individual, I have been impressed with the mental health of the ordinary policeman. The job of being a policeman is unique. It is one of the few occupations that a man engages in for which he is feared, sometimes hated, occasionally reviled, or even assaulted in the ordinary performance of his duties, When we consider that most people need and want to be liked, and that the young patrolman starts his career by seeing himself as an individual who will help and protect others, the uncooperativeness, antagonism, or hostility of the public whom he serves will place an emotional strain on him". Of late, with the advisory guidelines that have been put forth by various eminent police officers, researches and the guidelines of National Police Commission, the process of revitalizing the police administration has taken new dimensions in the educational qualification, training that is being imparted to infuse confidence and to make the constables more proficient in a job-oriented manner and also with a humanitarian touch to deal with the common man and the general public to raise the esteemed flag of Police in die eyes of the general public. There have been tremendous amount of radicalization in impressing upon the scientific method of investigation, the avoidance of third degree methods, efficiency in professionalism and to act as a protector and saviour of the community. Even though the renaissance cannot be achieved overnight the new methodical training to the police is
picking up its momentum and in the years to come, it will blossom with new horizons to pronounce that police is a friend, philosopher and guide. The newly-coined phenomenon of police-public-relationship in a pluralistic society is being activised to bring about cordiality in the developing society, with special reference to Indian context.

The days are not far off to achieve the goal as pronounced by August Volmer in his esteemed book *The Police and Modern Society*. “The ideal police officer is expected to have the wisdom of Solomon, the courage of David, the strength of Samson, the patience of Job, the leadership of Moses, the kindness of the good Samaritan, the strategy of Alexander, the faith of Daniel, the diplomacy of Lincoln, the tolerance of the Carpenter of Nazareth and finally an intimate knowledge of every branch of natural, biological and social sciences”. The work culture includes impartial dealing of everyone. The public we have to deal with comprises of conflicting classes and interests which often work at cross purposes. The landlord and the landless, the high castes and the low castes, the capitalists and workers, the employed and the unemployed, the students and the non-students, the privileged and the underprivileged, the urban groups and the rural groups, the different labour unions and religious groups — all represent special interests and apply pressures, which the police have to reckon with. It, therefore, become absolutely necessary for the police to understand the interests and aspirations of each of these pressure groups and to work out different strategies and techniques appropriate to deal with the conflict situation which arises therefrom.

1.0.9.3 Participative Management in Police

‘Participative management in an organization connotes the prevalence of effective delegation, a degree of autonomy to subordinate units, a machinery for consultation with
lower-level functionaries and die involvement of die latter in decision-making and its implementation. The participative orientation builds new culture by infusing confidence in die minds of die functionaries to contribute their mite as they tend to feel die oneness in die organization. In police, the participation phenomenon will not only shatter the hierarchical rigidity but also paves way for die team spirit and esprit de corps. This can be further amplified by explaining the concerted and coordinated efforts during maintenance of law and order. Participative Management creates a climate of goodwill, channalized communication, congenial atmosphere to work, improving cordial relations between the superiors and lower rungs and in curbing apatite. Sampark Sabha acts as a forum to ventilate die grievances of die officers and men to seek redressal. By airing and voicing their problems new solutions can be arrived at.

When there is no participative and consultative programmes the latent feelings are compressed which will blast as indiscipline, unrest, agitation, strike and revolt 'The practice of unquestioned obedience to one's superior, a tradition derived from the military model, had remained undisputed till recently. But the question now asked by many of the highly educated recruits is whether this should be so at a time when democracy is the dominant there. The demand is for a liberal atmosphere within the force that would not only bring about a greater upward communication but would also allow the lower functionaries a voice in its management'.

Welfare activities and improvement in the inter-personnel relationship will bridge the bond in a cemented form to bring about the sense of pride in the organization in discharging their responsibilities in the service to community.

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1.0.9.4 Police as Social Service Institution

In a pluralistic society the proportionate delinquency, perversion, violence, insanity, both male and female criminality, traditional blue-collar crimes and white-collar crimes, property offences, marginal crimes, traffic violations etc. are bound to exist. To combat all these types of crimes and to bring about public order and tranquility the policeman's job becomes tougher and tougher everyday. The police acts as a social service institution; it settles the street brawls, amicably brings about the unification and cementation of the disrupted families, taking all due precautions to save the life and property, to quell the riots, springs into action whenever there is a natural calamity like earthquake, floods, cyclone and emergencies like fire, etc.

The police takes on the regulatory measures in traffic to the safety of the citizens, maintains public decency for the harmonious happy-go of the general public, with the knowledge of psychology deals with the situations in an appropriate manner, takes due care to curb the crime by preventing and detecting. This is possible only with tremendous quantum of patience, sacrifice, skillfulness, restraint and with high morale.

It is true that an ideal policeman is depicted in Delhi Police Commission as follows: "From whatever angle one sees the pivotal policeman, it is essential that he must be a man of stature, educated, intelligent, alert, truly interested in work, possessing a good judgment, initiative and courage".

In this context, it is worth bringing home the point that the difficulties faced by police are immense and intricate. The professional hazards of police are in explainable. A policeman is at the peak of the criticism at all stages whether it is a mob control, crime control or public order maintenance. Similar situation holds good in getting the
convictions for the cases put in courts. By and large at every stage the police is at cross-roads of criticism in spite of the selfless service rendered, which only reveals and stands as an indicator to show that the citizens’ expectations are quite high and the police is expected to make its grades for the entire satisfaction of the citizens. In other words the citizens have high hopes and undaunted faith and trust in police, they expect every possible help, solace and remedy. The new dimensions are focussed as 'Police Service rather than of 'Police Force’.

The new dimensions of police personality and police image that might emerge out need the police personnel who could realize that the service has 'Social responsibilities' and he is the 'Saviour of the Society' from criminals and its manifestations.

To quote Taft:

"The policeman should conceive himself as an intelligent social worker, as a preventer of crime, as a community servant, he should think of his calling as one of the learned professions of himself, as an expert in the adjustment of delicate and complex human relations. In short, his work is an art dependent upon thorough familiarity with the rapidly developing social sciences.'

1.0.9.5 Police Community Relations

Truly/policing is a group endeavour. The public had developed such high expectations of its police that those expectations moved beyond reality to something that could be better described as faith. As the public came to have faith in the police to do all things, the police came to have faith that they could do all things when disillusionment set in, the singers lost Kith in the song, in each other and in them. By defining the police role

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very carefully so that it does not distort reality, the historical definition of the police role eventually achieved this regrettable result by fostering the belief that police, because they were present and visible twenty-four hours a day, could function as a gigantic surrogate service agency to the community handling all the needs of the people all of the time. Police is a social service organization, committed to community welfare orientation with progressive attitudinal change. The programmes that are introduced by police in this path to interact with the public have a long way to go. "Police cannot work without public cooperation and this will not be forthcoming if they do not win the trust and goodwill of the people which can be earned only by honest and disciplined performance of duty and proper human relationship." The success of the police in their work depends a great deal on the cooperation they get from the people.  

The accountability and answerability of police to people and vice versa is nothing but a bridging of good will between them. To infuse confidence and to win the hearts of the masses by inspiring faith and trust, police have landed in self-actualization of attitudinal change towards the public. There have been various emphatic programmes to mould, modulate and monitor the police response towards the citizens. The behavioural characteristics and human relations have been the motivating factors in tempering the humane touch to be worthy of emulation and practice. The social mission of law can be rendered to the well-being of the community by the relentless selfless service of the police. 'Policeman is the flesh and blood of the law. Without him the law and the constitution would have form but no substance'. But to such a functionary, the people would seldom extend their full cooperation and the political masters their discerning

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support Afton all law is the social commitment to order and unless all sections of the people cooperates the best results cannot be achieved.\textsuperscript{37}

\textbf{1.0.9.6 Thana Level Committee}

There have been Thana Level Committees to reactivate the public participation in policing. The respectable of the areas are opportune for participative activity at the police station and sub-division level to project their problems to arrive at redressal solutions instantaneously. The organizational dynamism in police with the induction of Special Police Officers has enlightened the endeavours to "get nearer the people" legacy. Socially constructive activities break newer grounds with tremendous possibilities in the socio-police integrated upheaval. Public cooperative tendency paves Way to the far visualized dream of crimeless society, may be in a microscopic form but still it plays a pivotal role. The grievance-redressal formulations work considerably to cement the popular image of police-public relations. It may be said in equivocal terms that every police officer is a citizen in uniform with authority to serve the community and every citizen has policing power to cooperate with public, the law enforcement agency and judiciary—the justice rendering agency.

\textbf{1.0.9.7 Police Advisory Committees}

In some of the metropolitan cities like Madras, Bombay, Poona, etc. there are police advisory committees for the active participative contribution by the public in maintaining public order.

The citizens' voluntary force is another terminology attributed to the good citizens who volunteer themselves in extending public cooperation. The purpose of all these

\textsuperscript{37} S.M. Diaz. New Dimensions to Police Role and Functions in India, p. 11.
organizations is not to transform the ordinary citizens to good Samaritans but with a view
to create the mutual trust between police and public and to infuse confidence and faith in
the police functioning. The acrimonious debate as to the humanizing the police force
comes to an end by the glaringly amplified public-police relations that glow in full
splendour. The police today marches off with new endeavours in the service to
community with special efforts in the emancipation of minority communities to solve the
problems of the cherished womanhood Y such as dowry-deaths (bride-burning), anti-
dowry measures and in the prevention and detection of fratricide, infanticide, child rape
cases, etc. The "third-degree" medieval has also been curbed by strict supervision and
instructions and by imparting training in scientific methods of detection and practical
training in versatile instrument in the detection of crime. There is no denial of the fact mat
at times due to emotionally surcharged atmosphere some might resort to such quick and
 crude method in the interest of Working out the case. Nonetheless by imparting die right
aiming, the third-degree method has become almost extinct in die diction-Mary of police.

1.0.9.8 Media and Police

While aiming at a happy and progressive society, the media also has vital and
crucial roles to play in helping the police in die prevention and detection of crime.
Disclosure of names of the criminals involved in a crime, or distortion of news and such
like slip shots might be detrimental to the investigation. In the interest of public safety and
crime detection, the flow of communication by the media shall have to remain unbiased and
may present only the scrutinized projection without any deliberate speculation.

1.0.9.9 Discipline and Lawlessness

While tremendous quantum of service is rendered to community by police, there
have been some sporadic instances of police unrest. Police is not merely an essential service
to community but also protector and saviour of the society. The image of selfless service shall be blurred by such unscrupulous activities of police. As a highly disciplined force which is responsible for the public well-being, the problems shall have to be sorted out at managerial level of police. The accountability and high-esteem of police to the societal well-being is marred by such lawlessness by the law enforcement agency. All due care and possible measures shall be taken at appropriate levels to shatter the frustration that creeps up, in order to maintain the police professional culture for me maximum utility in the service to community. All out imperative measures should be taken at the right time to police the police which may be in the following forms as mentioned by D.C.Nath:

i) intra-departmental or organizational control,

ii) governmental control,

iii) political control and

iv) societal control,

The cancerous growth of lawlessness in police is detrimental. Normally a country can be well judged by the quality of its police force. And the litmus test of police reputation is the good will and public trust as an instrument of service to community, the high esteem of the selfless service rendered by police stands as a glittering landmark in the annals of history by its own self control, preservation of professional culture, devotion and dedication. Last but not least, as a luminous social service organization to the betterment of the fellowmen and the society.\(^{38}\)

1.0.9.10 Interpol

Interpol is the world association of national police forces established for mutual assistance in the detection and deterrence of international climes and criminals. It aims to

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\(^{38}\) B.N. Mullick. Nehru on Police, p. 32
facilitate cooperation among the police agencies of member countries despite language and cultural difference, and to assist in taking counter-measures against the criminal activities of individual offenders and organized groups of offenders across national boundaries. Among the types of crimes that principally engage its attention are terrorism, drug trafficking, assassination, smuggling, theft, counterfeiting and other financial offences, trafficking in women, and the theft of works of art and other valuable objects.

Founded in 1923 and reorganized in 1946, Interpol has 133 national members, with international headquarters in the Paris suburb of Saint-Cloud. Its formal name is The International Criminal Police Organization (INTERPOL). In adapting to the age of computerization, Interpol is pledged to seek global compatibility, not only, of techniques but also of national policies on citizens' privacy rights.39

The foregoing analysis of the basic concepts of human rights and the organization of police clearly bring out the diversified dimensions of these concepts and briefly we may sum up the reasons of violation of human rights by police as under:

a. Lack of interrogation techniques.

b. Lack of scientific temper and professionalism.

c. Lack of knowledge of criminal law and procedures for investigation.

d. Unrealistic public expectation for results.

e. Political and official pressures for quick results.

f. Misconception that laws are not sufficient to achieve results legally.

g. Sadistic pleasure on the part of some police officers.

As on today it is felt that much is desired from police and there is much needed change required in their attitude from age old and conventional methods. Many of the police interrogations are crude, devoid of scientific techniques. Scientific temper in the investigation is becoming a casualty due to lack of aptitude in acquiring professionalism. The entire investigation of a criminal case is interwoven with the law and procedure and the evidence is to be gathered in tune with the law of evidence, acceptable in criminal courts. The investigation in a criminal case is to be placed for the test of criminal courts of law, challenged by the legal experts on behalf of the accused. But, the present legal knowledge of an investigating officer is limited to the knowledge he acquired during his induction training. If alone, he gets equipped with sufficient legal knowledge during his training in refresher courses relating to interrogation and investigation, much of these crude methods could be avoided. Sufficient knowledge of law, will remove his misconception, that law is not sufficient to achieve results legally. A well trained police officer with an aptitude to learn interrogation techniques, acquiring professionalism, taking advantage of the latest scientific aids at his command, need not turn to brutal measures to achieve results.

Police officer as one directly dealing with public, should constantly bear it in mind that he needs the assistance of the public either to maintain law and order or to gather evidence from witnesses or in obtaining clues during investigation. He can get such cooperation from the public only when he is polite and courteous in his dealings. Even, in dealing with the accused, there is no scope for inductivity as he does everything ordained by his duties. He should understand that his act is within the framework of law and should not exceed legal limits in his undue anxiety to get results. The topic is a great contemporary importance and accordingly it has been selected as the subject matter of the present research work.
1.1.0 THE PROBLEM


1.2.0 SIGNIFICANCE OF THE TOPIC

The police at the present day have enormous responsibilities. On the one hand, the police have to maintain the law and order in the society. On the other hand, they should not violate human rights, which are guaranteed under the Constitution of India and the U.N. Declaration on Human Rights. This is indeed beset with complications and innumerable problems on all sides. In this connection, the functions of the police may be briefly examined.

The present study clearly shows that those who have to make the laws and implement them are themselves becoming the law breakers in the society. This is indeed a deplorable situation and results in violation of human rights on a large scale. The criminal justice system can function satisfactorily only when there is a close cooperation and coordination between the police bench and the bar. Any lacuna or drawbacks in the system would result in violation of human rights which are basic fundamental rights or inherent rights of every individual. In this connection, the concepts which are employed in the thesis require some elaboration and detailed discussion.

1.3.0 OBJECTIVES OF THE STUDY

The objectives of the study are as under:-

(1) To study the crime and criminal justice in Police Organisation

(2) To know the structure and organisation of Police Department
(3) To examine the safeguards in protection of human rights in the maintenance of law and order

(4) To analyse the reports of different committees and their recommendation in protection of human rights

1.4.0 HYPOTHESES

After the preliminary observation of the subject matter and the conceptual frame of reference of the study, in the course of the study so carried out, following research hypotheses were formulated.

1. There are adequate number of safeguards for the protection of human rights under the constitution of India.

2. Enforcement of Rule of Law in defence of human rights is the primary duty of police.

3. Implementation of the Recommendations of National and State Human Rights Commission Reports is not completely satisfactory in so far as the response of Police is concerned.

4. Role of Police in maintenance of law and order with regard to human rights and judicial trends needs to be strengthened and redefined.

1.5.0 REVIEW OF LITERATURE

There are many standard works dealing with human rights and the police organizations. The author had gone through quite a number of books by visiting various libraries and the following are a few important works which need special mention. The data for the project work has been drawn from the under mentioned books on a doctrinal basis.
Leadership in Police is totally different and difficult from that we find in any other walks of life. It is so in as much as the ability to inspire and motivate the rank and file is so demanding that sacrificing of life in the line of duty is part of their occupational hazard. In the specific context of upholding Human Rights also, the police leadership has to set an example and be a role model for the subordinate ranks. Or else, they cannot enforce observance of Human Rights by their subordinates. Today, Human Rights are truly internationalized but not fully internalized. The internalization of Human Rights culture is now an irreversible need of the times and the police leadership has a crucial role to play in this regard (Ravi Prakash Kodumagulla and A. Suryanarayana, 2011)40.

Ben Golder and George Williams (2006)41 addressed the impact which post-September 11 counterterrorist legislation has had on human rights and civil liberties in a number of common law jurisdictions. The authors conclude that the counter-terrorist legislative regimes in the countries discussed in the article do impinge significantly upon human rights, and argue in favour of a ‘balancing approach’ towards reconciling such legislation with domestic, regional and international human rights obligations. The authors conclude with some general guidance for legal and policy decision-makers on how to balance the (frequently opposed) interests of national security and human rights protection.

Thomas K.V. (2006)\footnote{Thomas K.V. (2006), “Human and Civil Rights Groups and Policing Problems”, The Indian Police Journal Vol. LIII No. 3, pp.39–47.} collected a lot of historical and empirical data and on the basis of that certain findings were arrived at. The article unfolds these findings and comes out with a number of recommendations for harmonizing the relations between police and civil human rights groups by effecting changes in their style of functioning/operations. Other related issues relevant to the topic of research such as disparities in development leading to socio-economic instability, deprivation and exploitation of weaker and marginalized sections, emergence of left-wing extremism and their depredations, land-reforms, unsociability, gender-issues etc. are also covered in the article. One noteworthy feature of the article is that its contents are unbiased and based on ground level quality research and the findings and recommendations are relevant and applicable to law enforcement agencies as well as civil/human rights groups and NGOs operating in states/areas with major law and order problems.

Milan Ambrož (2005)\footnote{Milan Ambrož (2005), “The mediating role of the Ombudsman in the protection of human rights”, International Journal of Social Welfare, Vol. 14, Iss: 2, pp.145–153,} discussed in this article indicate that the respondents are aware of the power of the economy over social issues in all social affairs in our society. They see the networking role, professional knowledge and leadership skills of the Ombudsman as core competencies in solving problems pertaining to human rights brought about by increasing social inequality. Complex problems regarding human rights demand coordination between national and international governmental and non-governmental organisations because human rights are becoming a central dimension of international affairs today.
Pogge (2002)\(^4^4\) emphasized the Universal Declaration's Article 28 which says that “Everyone is entitled to a social and international order in which this the rights and freedoms set forth in this Declaration can be fully realized.” Pogge sees in this Article a plausible norm, namely that both countries and individuals have negative duties not to be complicit in an international order that unfairly disadvantages poor countries and the people in them. A coercive political order, whether national or international, “must not avoidably restrict the freedom of some so as to render their access to basic necessities insecure — especially through official denial or deprivation. If it does, then all human agents have a negative duty, correlative to the postulated social and economic human rights, not to cooperate in upholding it unless they compensate for their cooperation by protecting its victims or by working for its reform. Those violating this duty share responsibility for the harms (insecure access to basic necessities) produced by the unjust institutional order in question”.

Yash Ghai (2001)\(^4^5\) assessed progress toward the objectives of the Copenhagen Declaration on Social Development (referred to as “the Declaration”) and Programme of Action by using a human rights strategy. The Declaration seeks to make human rights the framework for policies to achieve the goals of the World Summit for Social Development, held in Copenhagen in 1995. This strategy assumes that the norms and machinery of human rights would inform decisions on development policies. It also assumes that rights would empower social and economic groups hitherto excluded from or disadvantaged in development and entitlements. In particular, it assumes that human rights norms that require and support democracy would provide the basis of political and


social stability, and that social and economic rights would eliminate the worst consequences of poverty. The author concludes that, although human rights provide a suitable framework for the goals of the Declaration, and there is considerable merit in using it, little progress has been made in the realization of rights that are central to the agenda of the Declaration. There has been more progress in democratization than in social justice, but even there the progress is strictly limited because there is no international consensus on the importance of rights. There are varying understandings of human rights, and there is no great commitment to this ideal on the part of governments. Even Western governments, which claim to be the foremost champions of human rights, attach greater importance to their national interests than to the realization of human rights. The achievement of global justice necessitates a massive transfer of financial and other resources internationally, from richer to poorer countries, and domestically, from richer to poorer classes. There simply is not the will at either level for these redistributions. On the contrary, the processes of globalization accentuate the disparities between the rich and poor, globally and nationally.

**1.6.0 METHODOLOGY**

Legal scholars, interested in having insight into policy of law its implementation or ‘understanding’ ‘social dimension’ or role of law, in the absence of their own well developed legal research methodology, have to place their reliance on the social science techniques of data collection (such as interview, questionnaire, schedule or observation) and research methodology. Ultimately, this approach of legal researchers has led to the evolution of a sort of ‘hybrid’ legal research methodology having a blend of (traditional) analytical (legal) research and empirical (social) research.
A systematic investigation of the first dimension of law (as a normative science), generally, falls in the domain of legal academia. A scholar of law, generally, undertakes a rigorous systematic analysis, exposition and critical evaluation of legal rule, legal principle, legal concept or doctrine (i.e. legal fact).

On the basis of the objectives of the present study the hypotheses have been formulated regarding to the subject by the following historical-cum-analytical method of approach. For this purpose, the data was collected from authentic sources of information like commentaries on law relating to protection of human rights and the role of police in maintenance of law and order.

The information from different sources collected through the law reports, law journals, e-journals, periodicals, all India reports, Supreme Court cases, High Court cases and local laws belonging to human rights. Data collected from special laws applicable to the human rights and its protection through law and order maintained by Police Department.

As the topic of the study needs an empirical approach, the researcher was developed his work by non-doctrinal, historical, comparative, constitutional and analytical approach.

1.7.0 SOURCES OF INFORMATION

The information for the thesis can be collected by following any of the two approaches – (a) A doctrinal approach; (b) A non-doctrinal approach. Doctrinal approach is also known as fundamental approach. It is also described as textual in nature. It consists of 2 kinds of sources - (a) Primary and (b) Secondary. The primary sources are concerned with legislation and case laws. The secondary sources are concerned with
articles published in leading journals, law reviews, text books, etc. The non-doctrinal approach is known as functional or contextual. It deals with social values, constitutional interrelations, principles of justice, good conscience, etc. In the preparation of the present thesis mainly the doctrinal approach has been adopted and the necessary material has been drawn from both primary and secondary sources.

1.8.0 CHAPTERIZATION

The thesis has been divided into six chapters.

Chapter–I: Introduction: In this chapter, the significance of the topic is brought out. Further, the hypotheses of the dissertation and objectives of the study are also discussed. Further, the concept of human rights and the police organization are elaborately discussed in this chapter. It is clearly pointed out that the police have a tight rope walking. They have to do their normal duties of maintaining law and order. In fact, this is the main function of the police. However, in recent times, various new types of crimes known as White Collar Crimes are being committed by people on a massive scale. In fact, it becomes very difficult to secure evidence in such white collar crimes. The scams committed in recent times by people like - (a) Telgi (Stamp paper scam), (b) Kosa Raju Venkateshwara (Krishi Bank) and (c) Ramalinga Raju (Satyam Computers).

Chapter–II: Crime and Criminal Justice System in Police: In this chapter, the essential ingredients of the concept of crime are explained in detail. Further, the nature of criminal justice system and the classification of various offences are also brought out.
Chapter–III: Police: Organization, Investigation of Crimes and Safeguards for the Protection of Human Rights under the Constitution of India: In this chapter, the following important points are discussed:

a. The organization of police
b. Investigation by the police
c. Safeguards for the arrested persons under the Constitution of India and the criminal procedure code for the protection of human rights of the arrestee.

Chapter–IV: Human Rights and Police Enforcement – International Conventions and Safeguards: In this chapter, the research scholar interpreted the information on conducting police investigation and enforcement of human rights. There is also a description with regard to international conventions and international reports on human rights enforcement in different countries like Bangladesh, Ukraine, Kenya, Sri Lanka, Pakistan, USA, Malaysia and Indonesia.

Chapter – V: Human Rights and Judicial Trends Vis-à-vis Role of Police in the Maintenance of Law and Order: In this chapter, the recent trend on the protection of human rights is brought in the context of role of police.

Chapter – VI: Conclusion: In this chapter, a brief summary of the thesis is put forth together with the observations, findings and suggestion of the research scholar. Every effort has been made to make the thesis as comprehensive and as authoritative as possible.