CHAPTER - II
THEORETICAL PERSPECTIVE OF HUMAN RIGHTS

The word ‘right’ is of western origin which upholds the idea of righteousness among people. This consciousness helps the enforcement of justice in society. The United States Declaration of Independence, 1776 and the French Declaration of Rights of Man, 1789 underlined the importance of human rights. In England the Constitution itself proved the fact that the people possessed human rights and that they are not at the mercy of the King. In India the idea of Dharma existing from olden times spread the idea of righteousness and it ushered in a peaceful social order. Dharma embraces both rights and duties. Human rights are the basic minimum rights which every person living in society shall possess. Its essence is human dignity.

The human rights being a universally adopted concept have no limitations in their applicability. Human rights are ‘universal’ in nature in the sense that they do not just apply to individuals as ‘citizens’ or ‘groups’ but to all human beings irrespective of their caste, colour, creed, sex, group or national identities. Human rights are ‘inherent’ and ‘inalienable’ because one enjoys them by virtue of his very existence. The very basis of human rights lies in the inherent dignity and worth of human being.¹ Human rights are a ‘holistic concept’ and there are certain basic essentials to qualify a particular right as human right. These essentials may be treated as: it is a right of individual or group of individuals, it can only be executed in a society for and against state by individuals or groups, these rights are meant to uphold human dignity and equality and to set forth liberty and fraternity to all without any kind of discrimination to all needy, these rights are the bare minimum requirements for survival of mankind or human beings in societies and these rights are protected and enforced by the authority of society or state at all levels.² All human individuals are equal in dignity and rights and rights exalt individual liberty. Thus, the idea of human rights emphasises the worth of the individuals and their rights- social, economic, cultural and political. No man can be on his best without enjoying these inherent rights. Based on the hub of human dignity, human rights- right to life, liberty, right to development (equality of opportunity for all in their access to basic resources, education, health
services, food, housing, employment and the fair distribution of income), freedom from slavery and torture, equality of status, equality before law, protection against arbitrary arrest or detention, right to property, freedom of religion, freedom of expression, right to work etc- are the quintessential values through which we affirm together that we are a single human community. The human rights are paramount in the sense that ‘no one can be deprived of human rights without a grave affront to justice’. Human rights represent certain freedoms which are sacred and which should never be invaded. The state should not override them at any cost and they can be exercised in spite of the law of the country. The human rights are practical in the sense that they are the claims, which are not physically impossible to be realised. Moreover, they can be extended to the majority and should not be restricted to a small minority. It does not mean that everybody can be made equal, but each has a claim to an adequate livelihood with minimum basic rights to existence. Human rights are enforceable because otherwise they cannot reach the people. Many states have set up Human Rights Commissions in order to ensure their implementation.

However, the known history of human rights shows that their universal significance and application were never easily identified, recognized and practised. At no point of human existence, all human beings were considered equal in the eyes of law. The paradoxical experiences of sense of superiority and desire for equality led to struggles for human rights protection and counter struggles for the maintenance of superiority. Human rights thus turned out to be individual’s claims to be recognized and honoured by the forces of domination in the society and the state. As domination and exploitation assumed different forms from time to time such as caste, slavery, feudalism, capitalism, colonialism, imperialism and globalization, the dynamic concept of human rights also gradually evolved through turbulent ages.

The human rights include those rights that individuals need to have against authoritarian state or other public authorities by virtue of their being members of the human family. An Individual’s rights are likely to be violated by an authoritarian state or public authority. From the very beginning of human history, man had struggled for his existence against gruesome nature and his selfish fellowmen. Thus, they had become operative even from his birth itself. Hence, these rights are inherent in all nationalities. The notion of human rights has today achieved global significance since
they belong to each of the individual regardless of ethnicity, race, gender, sexuality, age, religion, political conviction or types of governments.

Eventhough, these rights are highly significant and are basic to human welfare and prosperity, all individuals have not been allowed to enjoy these rights on account of administrative, political, social, economic and cultural exertions. The concept of the ‘survival of the highest’ has caused quarrels and conflicts among human beings quite often and it has become necessary for framing rules and regulations for safeguarding the weaker sections.

As the Chairperson of the UN Commission on Human Rights, the term ‘human rights’ was first used by Eleanor Roosevelt. According to her, the idea of human rights is the most precious legacy of classical and contemporary human thought to culture and civilization. In India, under section 2 (d) of the Protection of Human rights Act, 1993, (Act No.10 of 1994) human rights are defined as “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.” Thus, the very concept of human rights provides infinite dimensions to the overall development and protection of individuals as human beings.

However, the concept of human rights is becoming more and more significant in the 21st century. The present world scenario is such that it upholds neoliberal values. There is economic progress but the hitherto upheld moral values are slowly being lost. Inequality and poverty are on the increase so much so that human rights are continuously abused. The state seems to have forgotten its commitment to the poor and the needy. The social welfare state is slowly switching over to an authoritarian one.

2.1 State and Human Rights- A theoretical Overview

2.1.1 Classical Origin of Human Rights Thoughts

The study of human rights somehow needs the sense of varying theoretical perspectives that dominate the different disciplines. The discourse on human rights may be a relatively modern creation. But the ideas that embedded in it can be traced back at least as far as the classics if not before. Indeed most ancient religions incorporated codes of practice which might be interpreted as implying certain rights, even if they were largely stratified. Ancient and classical philosophers also
contributed to this discourse. Although it is not easy to find in the ancient and classical scholars, a clear precursor to current thinking about human rights which might be recognizable to us. The Playwright Sophocles (495-406 BC) provided an early defence of the individual’s right to resist state repression.

Plato (427-348BC) developed an early version of universalism in ethical standard, implying fair treatment to all persons, whether they are citizens or not. Aristotle (384-322 BC) elaborated the significance of virtue, justice and rights in accordance with the political community. The Greek Stoics and their Roman counterparts especially Cicero and Seneca were so enthusiastic to talk about being citizens of the world.

Early thoughts of human rights can be found in various religious texts. Geoffrey Robertson makes the useful point that one can lead the Ten Commandments; which were purported to be applied universally as basic rules for moral and spiritual behaviour, as implying some fundamental rights. For example ‘Thou shall not steal’ seems to suggest the right for individuals to own private property. Thomas Aquinas (1225-1274) believed that human dignity and value are innate properties which are validated according to natural law.

In medieval and early modern western philosophy, much deliberation of politics had centered on the divine right of kings. According to this theory kings held their place in the society by nature and act only according to the will of God. All other people were subservient to the king. These ideas were challenged, via a microscopic analysis of what would constitute a pre social human nature, by Thomas Hobbes. (1588-1679) In his book ‘Leviathan’ which means monster, published in 1651, Hobbes stated that humans are essentially violent and greedy animals and in their natural state they live in an unsophisticated, nasty brutish and short world of anarchy. However, Hobbes’s defence of the kings right to rule was radical because, by appealing to some pre-social conditions and essential human nature, he justified it according to the consent and basic needs of the people. In fact while Hobbes was arguing for the right of the king to rule, he was also claiming that the individual subject has the basic right to security and that the state itself is framed out of recognition of this basic right. While going through Hobbes’s contribution, it is pertinent to note that the political situation in Europe at the time he was writing was
nervous and uncertain. The power of the king was under attack from parliamentarians dedicated to establishing a form of Government guided by the people. Even more significantly, the Dutch jurist Hugo Grotius (1583-1645) made the first significant case for the establishment of International laws to protect all citizens of the world.

Hobbes had indicated that humans had an innate right to security from the State. Grotius based his beliefs on a moral commitment to international justice. John Locke (1632-1704) first coined that there are such things as natural rights: rights which are ours by virtue of the fact that we are human. According to him these rights are shared by all people; they are inalienable and cannot be deprived by any political party. Locke attacked Hobbes’s defence of the legitimate rule of kings, while upholding the establishment of the Bill of Rights. In his ‘Second Treatise of Government’, published in 1690 he applied the same methodology as Hobbes but inverted his predecessor’s conclusions. Rather than rely up on an image of pre-social human beings as warlike, greedy and violent, and in need of a strong state to ensure security, he claimed that in such a state of nature humans are naturally peaceful, free and mercantile. The State emerges, he claimed solely out of the occasional need for an independent arbiter in any disputes which may arise over trade or property. However, most of the Locke’s philosophy was provided by the impact of the Judaeo-Christian tradition, which establishes that, the responsibility to protect our rights and those of others and to better our self, falls on us as individuals. He thus upholds the idea of rights as an attack on the concept of a strong State.

Locke’s ideas were philosophical and did not require, in his view, formalization in to law for them to have any power. Jean-Jacques Rousseau (1712-1778), another philosopher extended the social contract tradition beyond the simplistic individualism of Hobbes and Locke to incorporate the role of the community in his famous tome ‘The Social Contract’, in which he argued that the community must represent the general, will of the people. Rousseau started with his famous observation: ‘Man is born free, but everywhere is in chains!’ He was a part of the tradition known as French Enlightenment.

Charles-Louise de Montesquieu (1684-1755) is credited with developing the theory of Separation of Powers- that is, in a just and fair State, it is necessary for three branches of the State: the Executive, the Legislature and the Judiciary to be
independent from one another. He studied society as a total system and thus considered most of its institution to be there according to nature, he was nevertheless outspoken in his opposition to all forms of despotism, slavery and intolerance. Francois Marie Arouet, Voltaire (1694-1778) called for the abolition of Torture and degrading punishments and famously, attacked censorship by calling for a respect for freedom of opinion and expression, whatever the views of the content in question might be.

If the French Enlightenment thinkers laid down the foundations of the political “rights of man”, it’s the German philosopher Immanuel Kant (1724-1804) who is credited with weaving the ground work for the modern understanding of human rights as ethical practice. Kant wanted to explicit that human rights were distinct from those civil rights provided to the citizens of a State by the Government of that State. This is why he proposed a triangular structure of rights; first the civil rights of individuals within their nation-states, second the international rights of States in their dealings with one another; and the third the cosmopolitan rights of individuals and State as existing interdependently in a universal state of humankind. These theories of philosophers were largely criticized by some of their illusions and eminent counterparts. Chief among these are the ‘Utilitarian’ critique of rights made by Jeremy Bentham and the radical critique of bourgeois individualism espoused by Karl Marx.

Jeremy Bentham went to the extent of saying that the concept of natural law, and of rights in general as “nonsense on stilts because they are not observable and not enforceable. For the Utilitarian’s, the concept of rights can only be defensible if these rights are seen to have emerged out of the quest for the greatest happiness.

2.2 Theories of Human Rights

Various theories have been propounded with regard to the origin of human rights by different writers.

2.2.1 The Liberal Individualist Theory of Natural Rights.

This theory was propagated by the exponents of liberalism in the 17th and 18th Centuries. It is the earliest theory of rights. The liberal concept of rights explains that liberty issues in the form of individual rights. According to the
exponent of this theory, the natural rights are pre-political and pre-social. The advocates of Natural Rights Theory favoured only minimal state intervention and supported free market economics.

2.2.2 The Legal Theory of Rights.

By the end of the 18th Century and the beginning of the 19th Century the limitation and shortcomings of the Liberal-Individualist theory of rights were fully exposed. It became very clear that the individuals could not enjoy the so called ‘natural rights’ unless they were recognized by the State and protected by the laws of the State. Thus, the rise of the Legal Theory of Rights was a logical corollary of the necessity of the recognition and protection of the natural rights of the individual by the State.

2.2.3 Historical Theory of Rights.

This theory emphasises that the rights are the product of history. This theory was propounded by the thinkers of the historical school of philosophy in the 19th Century. Edmund Burke, Sir Henry Maine etc were the exponents of this theory. The theory holds that rights are the crystallisation of customs and traditions. For eg. English Revolution (1688) was based on the customary rights of English people.

2.2.4 The Idealist or Personality theory of Rights.

The chief exponents of this theory were German Idealist Philosophers. According to this theory, rights are the external conditions essential to man’s internal and real development. Human beings need healthy and congenial external conditions for the development of their personality. These conditions can be created and imparted only by the State. The theory looks at the rights from a highly moral point of view.

2.2.5. The Social Welfare Theory of Rights.

The Social Welfare Theory of Rights was popularized by the utilitarians, Jermy Bentham and John Stuart Mill during the latter half of the 19th Century. The theory was largely accepted because the philosophy of ‘individualism’ could not provide ‘harmony in society’ or reconcile harmoniously ‘self interest’ with the social interest. This theory proclaimed that rights are created by the society, are aimed at
realizing social welfare. What is socially useful should have for its test the greatest happiness of the greatest number.

2.2.6 Marxist Theory

The equally pragmatic critique of the language of human rights was presented by Karl Marx (1818-1883). Fully aware of the persecution suffered by the Jews in Germany, Marx wondered how useful the declaration of the rights of man in France would be in helping Jews like himself in their plight. Karl Marx re-read the Declaration of the Rights of man in France and arrived at a conclusion that it said little other than that humans were bourgeois individuals separated from each other and from their communities. He added that there are no pre-social rights, since we become people only in society. Thus rights are political and social and are obtained through prolonged historical developments and unending struggles. While applauding the possibilities contained within the new discourse on citizenship, he dismissed the egoism and individualism of the Declaration as insubstantial in terms of true empowerment. Marx is of the opinion that each of the rights contained therein, pertaining to the rights of equality, liberty, security and property addresses private individuals and not humanity as a species: Society. It is one thing to be recognized in law as an individual with certain highly individualised rights. Marx says that the Declaration did not pay attention to true emancipation rather addressed the bourgeois instead of the citizen, ‘man’ instead of ‘men’. For the Marxists, rights have no meaning apart from the State and the community.

2.3 The Third World Approach

The third world countries belong to Asia, Africa and Latin America and people of these countries share certain common features. The most important hallmark is their poverty. Most of these nations became independent only after the Second World War. The most important item in their agenda is to protect their newly won independence. Similarly the economic deliverance of the people from extreme poverty is highly significant. Social and economic rights are more important for the people of third world countries. Therefore, the western concept of complete freedom for the individual does not appeal to third world statesmen. In that case inequalities and exploitation will increase. Moreover, the State plays a positive role
in third world societies for the protection of individual rights. Thus, if the western scholars contemplate a minimal role for the state, the third world scholars assign an active role for the state.

Naturally, the criticisms leveled against third world governments that there is human rights denial in these countries are not tenable. Here we find a difference in the standard practices in the western and third world countries with regard to human rights.

2.4 Historical Evolution

One should set the clock back to ancient Greece as well as early Vedic period in order to trace the historical origin of the concept of human rights. Human rights have an evolutionary history of about 2000 years which commences from the promulgation of Cyrus the Great Although it is not easy to find, in the ancient and classical scholars, a clear precursor to current thinking about human rights which might be recognizable to us, various strands of thought did originate in the philosophical and dramatic writings of these commentators. For example, the playwright Sophocles (495-406 BC) provided an early defense of the individual’s rights to resist state repression. Plato (427-348 BC) developed an early version of universalism in ethical standards, implying fair treatment to all persons, whether they are citizens or not.

Human rights ideals like justice, liberty, constitutional government, respect for the law etc. are the offshoots of Greek thinking in respect of the institution of City States. The Hellenic thinkers made a clear distinction between citizens and foreigners and denied political and civil rights to the slaves. In Sparta, the Nobles had enormous family estates and every Spartan child received a share of the public land when he became an adult. Slavery existed among the Greeks from pre historic period. In fact the Greek citizens were lenient in the treatment of their slaves and provided to them legal protection against cruelty and abuse. The slaves who were made free were provided with the status of resident aliens, if not full citizenship.

Human rights as conceived now remains one of the major themes of political, philosophical and legal discourses and a substantial body of opinion holds that they ought to have legal protection. The history of mankind has been firmly associated with the struggle of individuals against injustice, exploitation and disdain. The
development and recognition of human rights in this process is one of the most remarkable achievements of human history. The origin of the concept of human right is usually agreed to be found in the Greco-Roman natural law doctrines of stoicism, which held that a universal force pervades all creation and that human conduct should therefore be judged according to the Law of Nature and the Law of Nations, in which certain universal rights were extended beyond the rights of Roman citizenship. These concepts taught more of duties than rights. The modernistic conception of natural law was elaborated in the 17th and 18th centuries by such writers like Rene Descartes, Gott Fried, Leibnitz, John Locke, Spinoza and Francis Bacon. Of the above, particularly to be noted are the writings of the English philosopher John Locke, who was perhaps the most important natural law theorist of modern times and other philosophers include Denis Diderot, Voltaire, Montesquieu and Jean Jacques Rousseau.

The Protection of the rights of man was deeply inserted in the Babylonian laws, Assyrian laws, Hittite laws and Dharma of Vedic Times in India. They were widely and wisely discussed by the Greek and Roman Philosophers. Their discussions were based on religious foundations. The right to vote, right to trade, right of access to justice to their citizens etc. were all guaranteed by the City States of ancient Greece.

The idea of human rights acquired new dimensions in the writings of John Locke (1632-1704), Jean Jacques Rousseau (1712-1778), Jeremy Bentham (1748-1832), John Stuart Mill (1806-1873), T.H.Green (1836-1882), Karl Marx (1818-1883), Harold Joseph Laski (1893-1950) and many others.

The concept of human rights however found its expression in Magna Carta of 1215. The Petition of Rights of 1628, the Bill of Rights, 1688, the American Bill of Rights of 1789 and the French Declaration of the Rights of Man of 1789 all became important milestones in which the individuals acquired protection against the capricious acts of Kings. The other developments which contributed to the evolution of human rights were the humanitarian laws of warfare. From time to time various attempts were made to limit the horrors of warfare and to humanise it. Modern developments in this regard are traced to the efforts of Henry Dunant who after witnessing the horrors of Salferino Battle organised a Conference in 1863 regarding the sufferings of wounded which ultimately resulted in Geneva Convention of 1864, and subsequently various other Conventions like Hague Convention 1899, Geneva
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Conventions 1927 and 1949. These Conventions laid down the rules of warfare with the intention of reducing the cruelties of war.

2.4.1 The Magna Carta -1215

The signing of Magna Carta by King John at Runnymede in England in the year 1215 was the first milestone in legal history of the freedom of people in the world. It is known as ‘a Great Charter of Liberty’ and the ‘Bible of the British Constitution’. The Magna Carta represented agreement between the King and the baronage and its main purpose was to protect the rights and privileges of the feudal lords of Britain. This Agreement is also regarded as ‘the corner stone of modern democracy’.

King John of England was made to grant Magna Carta to the English barons on 15th June, 1215 in such a way as their privileges will not be encroached upon or quashed and hammered. The importance of Magna Carta was confirmed in the year 1297 during the period of Henry III and was subsequently modified by Edward I.¹⁰

The Parliament’s superiority over the Crown was established in 1689 as a result of the Petition of Rights and the Bill of Rights. Thereafter the rule of law in England was cemented on these historical documents. The concept of people’s rights enshrined in these golden documents henceforth found a unique place in many of the constitutions in the world in the form of “fundamental rights or people’s rights.”

The Renaissance and the Reformation were almost parallel movements that kindled new human rights awareness. The dominant political effect of the Renaissance was to secularise the state. The leaders of the Renaissance Movement brought the individual into the forefront. The Renaissance also helped the strengthening of the modern state. It also added to individual liberty and democracy. The growth of trade, commerce and industry further led to the emergence of a new middle class which aspired for more individual rights. The period thus witnessed human rights assertions against monarchical absolutism. The great changes during the 17th and 18th centuries paved the way for divergent approaches with regard to the assertion of human rights.
2.4.2 Petition of Rights -1628

The Petition of Rights was the next important development after Magna Carta with regard to the evolution of the rights of man. In England, the House of Commons wanted the King to stop illegal practices that he had resorted to throughout war. This finally led to the signing of the famous Petition of Rights, 1628 which called for an end to four abusive measures:-

1. Forced loans or other arbitrary taxation;
2. Imprisonment without due process;
3. The billeting of troops in private homes;

The King’s acceptance of the Petition of Rights was a milestone in English constitutional law. Like Magna Carta, it affirmed that the monarch was not above the law. It asserted certain rights of the British Parliament and the Parliament enacted it as a statute, which later became a part of the positive law of England.

2.4.3 Bill of Rights -1689

The issue in the English Revolution of 1688 was regarding the customary rights of the Englishmen. It was simply a reassertion of the rights that Englishmen had enjoyed since the days of Anglo-Saxon rule and which had found expression in documents like the Magna Carta and the Petition of Rights. These two documents paved the way for the passage of the Bill of Rights in the year 1689 by the British Parliament.

The Bill of Rights which was drawn up by the Convention Parliament made several declarations that the suspending and the dispensing powers exercised by King James II were illegal, King’s power of dispensing with laws was declared illegal, special King’s courts were declared illegal, Prerogative taxation without the consent of Parliament was declared illegal, the subjects had the right to petition the King, the deployment of army during the times of peace was illegal, freedom of speech and freedom of debate in Parliament was recognised and the Roman Catholic or one who married a Roman Catholic could succeed to the throne of England. It recognised the right to trial by Jury and prescribed that, in courts, law of excessive bail should not be required, nor excessive fine imposed, nor cruel or unusual punishment inflicted.
2.4.4 **American Declaration of Independence-1776**

The American War of Independence was another important event which helped the evolution and growth of human rights. The closing of the Boston Harbour was intended to frighten the colonies into submission. But it produced the opposite effect. In 1776 the delegates from the colonies who had assembled at Philadelphia issued the Declaration of Independence, breaking all ties with Britain and proclaimed all colonies to be free and independent nations. This historic document was accepted by the Congress on the 4th July, 1776. The thirteen colonies of America adopted the name the United States of America and the fight for their independence started. Ultimately by the Treaty of Versailles in 1783 England recognized the independence of the United States. A committee appointed by the Philadelphia Congress consisting of Thomas Jefferson, Benjamin Franklin and others met at Philadelphia on 4th July, 1776 and passed the famous Declaration of Independence. The Declaration reads “*We therefore, the representatives of the United States of America, in General Assembly, appealing to the Supreme Judge of the world for the rectitude of our intentions do, in the Name, and by Authority of the good people of these colonies solemnly publish and declare, that these united colonies, are, and of Right ought to be free and independent States.*”

This Declaration of Independence proclaimed that “all men are created equal” and emphasized their inalienable rights. It further added that “these unified colonies are and of right ought to be free and independent states”. The American Constitution later on incorporated the Bill of Rights, dealing with the rights of the people like freedom of Speech, Press, Assembly and Religion. It also guaranteed procedural protection in criminal trials.

2.4.5 **French Declaration of the Right of Man and Citizen -1789**

This Declaration to a greater extent fertilized the growth of human rights in a wider perspective. As part of French Revolution, the National Assembly of France wanted to frame a Constitution to replace the hated ancient regime. As a prelude to the Constitution, the Declaration of Rights of Man was issued by the National Assembly. The Declaration laid down that all men are born equal in rights, sovereignty resides with the people, law is the expression of the ‘General Will’, none should be imprisoned unless for violation of the laws of the land, no person shall suffer on account of his opinions, provided the expression of such opinions did not imperil the
peace and well being of the community and all taxes should be raised only by the consent of the people.

It was during the period from the Renaissance until the 17th century that the beliefs and practices of society so changed that the idea of human or natural rights could take hold as general social need and reality. The writings of St. Thomas Aquinas, Hugo Grotius etc. had reflected the view that human beings are endowed with certain eternal and inalienable rights. This age, no doubt, opened an avenue to the horizon of human rights which enlightened the world of 19th century and enabled human beings to know more about the human rights which they possess along with the worth of human personality.

By the late 20th century, it had generally come to be agreed that all human beings are entitled to some basic rights, marking the birth of the universal recognition of human rights. In the Charter of United Nations, all members pledged to achieve universal respect for and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. The United Nations has continued to affirm its commitment to human rights, particularly in such documents as the Preamble of the U.N Charter and Universal Declaration of Human Rights.12

2.5 Definition, Nature and Scope of Human Rights

Human rights are those rights which are essential for a decent and dignified existence for human beings. As such these rights shall belong to all individuals irrespective of caste, creed, class, sex and nationality. Bosanquet has defined human rights as “a claim recognised by the society and enforced by the state”.

According to Justice V.R. Krishna Iyer, a human being is entitled to these rights from womb to the tomb. He further says that human rights are those irreducible minima, which, belongs to every member of the human race when pitted against the state or other public authorities or groups and gangs and other oppressive communities.

The idea of human rights, for a liberal natural right theorist, is that all individuals have rights by virtue of our common humanity. Individuals have certain kinds of rights as members of a particular community. Thus even if individuals are
denied rights by the laws of a particular state, they still can make a claim to rights by virtue of their membership of common humanity.\textsuperscript{13} Human rights are thus distinct from, say, constitutional rights or the rights of democratic citizenship, or from other kinds of rights that are related to certain kinds of political institutions, both individualist and associational. They are a special class of rights of universal application and hardly controversial in their general intention. They are part of reasonable law of people and specify limits on the domestic institutions required of all peoples by that law.

However, the expression human rights is relatively new, having come in to everyday parlance only after second World War and the formation of the United Nations in 1945. It replaces the phrase ‘natural rights’, which fell in to disfavour in part because the concept of natural law had become a matter of great controversy, and the later phrase ‘the rights of man.’\textsuperscript{14} In sum, the idea of human rights, called by another name had played a key role in the late 18th- and 19\textsuperscript{th} century struggles against political absolutism. It was indeed the failure of rulers to respect the principles of freedom and equality, which had been central to ‘natural law philosophy’ almost from the beginning.

\textbf{2.6 Classification of Human Rights}

The coming of democracy has increased the importance of human rights. This is because no other form of government emphasises so much of rights. Moreover, the citizen participates in democratic administration. The emergence of the mass media and the modern means of communication have also increased the significance of human rights. The media today highlights all human rights violations whenever and wherever they occur.

Human rights are broadly classified in to three:- First Generation Rights, Second Generation Rights and Third Generation Rights\textsuperscript{15}.

\textbf{2.6.1 First Generation Rights} These are primarily concerned with civil and political rights of individuals. Civil rights include right to life, liberty, security, freedom from torture and slavery, right to property, marriage, fundamental freedoms
of opinion, expression, thought, conscience and religion, freedom of association and assembly. Political rights like right to vote and right to contest elections enable a person to participate in the governmental process.

2.6.2 Second Generation Rights.- They are also termed as ‘security’ oriented rights. They provide social, economic and cultural security. They are considered more positive in nature because they make it the duty of the state to ensure that these rights are realised.

2.6.3 Third Generation Rights- These rights emerged recently on the basis of international consensus. These include cultural, developmental and environmental rights. Basically, they relate to groups rather than to individuals. The people have the right to a clean environment and all governments shall keep this in mind while preparing developmental projects.

Thus the concept of human rights has achieved wide ambit and recognition in the present day world. International law, international institutions and international agencies have proved themselves to be inadequate to prevent the large scale abuse of human rights. Human rights jurisprudence gets strength and vitality, when the notion of social justice is promoted by the state. The transition from a Laissez faire system to a welfare system and the incorporation of the Declaration of Rights either in the form of fundamental rights or citizens rights or people’s rights in the constitutions of most of the countries particularly, third world countries after the second world war, have all paved the way for the active participation of states in the protection and enhancement of human rights.

Having passed through the various stages of socio-economic transformations, the nature of man’s rights and freedoms has also undergone metamorphosis and today the idea of ‘human rights’ has gained so much of momentum that it encompasses all kinds of rights i.e. civil, social, economic and political within its purview. The concept of human rights is anthropocentric- whatever adds to the welfare and dignity of human beings is an ingredient of it. Thus, providing a uniform code of rights, aiming at providing good and dignified life to a human being, transgressing all kinds of
boundaries-territorial, physical, religious, gender, colour or race constitute an integral part of human rights. Human rights have become the common language of humanity today. The wide significance and infinite range of human rights has once again come for a detailed discussion in the ‘Copenhagen Summit on Global Warming’.

The concept of human rights has gained infinite significance and boundless ambit today. Simultaneously the range of its violation has also been amplified globally. On the one side, powerful nations of the world are incessantly arguing for the protection of human rights. At the same time they have also become the predators of human rights. History witnesses the fact that all along, the most sinister violation of human rights stems from the cynical and derisive attitude of those who are in power towards the poor, suppressed and the downtrodden. This has become the order of the day and custom of the society at large.

Thus the very question as to who are the perpetrating or the violators of human rights is also to be necessarily answered. The state which is expected to be the guardian angel of the fundamental rights and freedoms of its citizens guaranteed in the constitution, most often turns to be the perpetrator. Moreover, the state and the authorities thereunder are always accused of violating the human rights of its subjects. The history of Indian judiciary unveils that thousands of Writs have been issued by different competent courts in the country against the state pertaining to violation of rights since the Constitution came into force. The establishment of the National Human Rights Commission at national level and the State Commissions at state levels shows the willingness on the part of the nation to promote and protect human rights. But unfortunately the Annual reports of the National Human Rights Commission for the last fifteen years since its inception in 1993 accounts for the gravity of violation of rights of its citizens by governments at the centre and the states. More than 70 percent of petitions which come before the Commission are against the law enforcing agencies of the state. It is pertinent to see that very serious allegations are raised especially against police and their atrocities against women, children, Dalits, Adivasis etc. Custodial violence, tortures, fake encounters are on the increase both at national and
state level. According to the National Crime Records Bureau, there were 335 cases of custodial deaths reported in the country during the period 2005-2007. Article 5 of the Universal Declaration of Human Rights says that “No one shall be subjected to torture or cruelty, inhuman or degrading treatment or punishment.” In all custodial crimes, the real concern is not only the infliction of pain one suffers but also the mental agony, the trauma that a person undergoes within the four walls of the police station or lockup. This is the reason why even in the 21st century where human rights are dealt with paramount importance, people look at the police and the police stations with a nostalgic horror. By its very nature, the process of torture destroys all involved, the victim, the soldier, the doctor, robbing them of their dignity and their humanitarian impulses. Torture, like genocide is a crime of the state. With the other abuses of human rights by the state as discussed above, its greatest contradiction lies precisely in the fact that the authority responsible for punishing crimes is guilty of the worst violation. Besides, state makes legislations for the welfare of its subjects. But these welfare legislations, due to its non implementation or defective implementation causes violation of rights as in the case of the implementation of wrongful administrative policies by the state. The Forest Rights Act, 2005 is a welfare legislation enacted by the Parliament, intended to assign forestland to Adivasis and other traditional forest dwellers. After four years of the enactment of this legislation, governments at both the centre and the state have failed to implement the Act, which is an obvious violation of the right to life of Adivasis in India.

2.7 Human Rights in India

Human rights in the Indian context have deep historical foundations. Throughout Indian history, people always gave importance to group life and group awareness. Each person had concern for another man’s freedom. The reference in the Vedas and Upanishads about Vasudaiva Kudumbakam (The entire world is one family) reveals this fact. This makes it clear that in no other civilization were slaves few in numbers, and in no other ancient law book are their rights so well protected as in Arthashastra.
India has been in the forefront of the demand for the protection of human rights at the global level and she has ratified almost all the international conventions and protocols relating to human rights. But the present situation pertaining to human rights in India shows a bleak scenario. The rate of human rights violation in India is alarmingly on the increase. The civilians often become the prey to human rights violations in all fields. The Supreme Court frequently expresses its deep anguish and condemns the existing system of rights of women, children and the marginalised sections for lacking 'human concern'. The Human Rights Commissions in India get concerned over multiple forms of human rights violations.

2.8 Human Rights in Ancient India

The Vedic Literature has contributed a lot to the origin of the notion of human rights in India. The Rig-Veda declares that all human beings are equal, “all human beings are brothers, and there is no one either superior or inferior among them by birth. This message holds a unique place in the history of human rights in ancient India. It is only by bearing in mind this idea that one can truly prosper.” (Rig-Veda 5, 60, 6)

The noble principles of liberty, fraternity and equality are enunciated in the Vedas in the clearest terms. The Bhagavad-Gita emphasises equal regard for all. The Gita says that ‘he who has no hatred to other creatures, who is also friendly and compassionate, who is free from possessiveness and egoism, who equalises in pain and pleasure, is dear to the Absolute’. (Chapter XII-13, 14)

The ancient Indian concept of human rights regulated warfare and emphasised the laws to be adopted before, during and after the war. The legal texts like Manusmriti, Dharma Sastras, Mahabharata, Arthasastra etc. dealt with such rules and laws. According to Manu, the following individuals must not be slain: one who is sleeping, one who is without armour, one who is naked, one who is deprived of his weapons, and one who is only looking on and not fighting. Man began the struggle for his existence even from the very beginning of human history. The concept of ‘might is power’ or ‘the survival of the fittest’ has caused conflicts and quarrels among human beings and paved the way for the framing of rules and regulations for the safeguard of the weaker sections. When the rights of one state were violated by another, a solution
was forcibly arrived at through war or treaty. Hence, during the ancient period, war was a determinant factor of a nation’s rights.17

Ancient India also stood for the equality of the people. If ‘Tattvam Asi’ i.e. ‘Thou art’ that, and ‘Aham Brahmasmi’ i.e., ‘I am’ that conceived the universality of the individual soul, it was the principle of ‘Vasudaiva Kudumbakam’, i.e. ‘All are one human family’ that propounded universal equality.18 The functional focus of the central concept of ‘dharma’ is social order. Dharma as a supreme value binds Kings and citizens, men and women. The cultural heritage of India in the field of jurisprudence has been praised and criticised, but its basic principle is harmony and happiness and upholds social stability based on the consensual view of the good and the learned in the society. Accordingly, Dharma as a content of the ‘Dharma Sastra’ involves the things of the body, mind, intellect and soul in myriads of interests and values. Dharma exhorts all to keep away from immoral activities. The root of concern for human rights in the Vedic age may be seen in religion, humanitarian traditions and this tradition helped the monarchs of ancient and medieval India to administer law and justice. The concept of human rights also covers animal and environment protection because man depends upon all these for his wellbeing.19

The Rig-Veda speaks of civil rights and the Mahabharata speaks of civil liberties in a state. The Sangham literature, one of the literacy sources used in the study of social, political and economic aspects of ancient South India, reveals aspects of humanitarian principles and human rights. But the post-Vedic age witnessed a downfall of human rights jurisprudence.20

The Buddhist doctrine of non-violence indeed is a humanitarian doctrine par excellence, dating back to the 3rd century B.C. Both Buddhism and Jainism emphasised the principles of equality and non-violence. Buddha was the earliest ‘protestant’ against caste injustice.21 If someone hurts anybody physically or even vocally, he may be treated as a person lacking in basic human qualities. For proper realisation of human rights, it is essential that the society as a whole accepts its basic norms and that the rule of law is upheld. It is in this context that one needs to address the relevance of Buddhist philosophy in the contemporary society. Buddhism does not believe in discrimination or inequality simply on the basis of one’s birth, caste or colour. The legal principles comparable to those of the contemporary society (e.g.
equality, fraternity, justice, liberty, etc.) can easily be deduced from the systems of norms and ideals upheld in the Sangham period.

However, the philosophy of human rights received a setback during the latter part of the ancient period especially during the Gupta period. An extremely high ideal was placed before the King by Kautilya in the ‘Arthasastra’. He proclaims the magnificent “ideal”- in happiness of the subjects lies the happiness of the King, in their welfare lies his welfare; the good of the King does not consist in what is pleasing to himself, but what is pleasing to the subjects that constitute his good. From this it is clear that the development of human rights in India has its roots in ancient times.

2.9 Human Rights in Medieval India

During the medieval period, the Muslim rulers had followed a policy of discrimination against Hindus. But Akbar’s policy of universal reconciliation and tolerance was a turning point in the history of rights too. By the introduction of child marriage, female children lost their rights to education by becoming early wives, early mothers and early widows also. Their rights were tampered by their fathers before marriage and after that by their husbands and in-laws. For most women, their identity and rights were eroded during the medieval period. The Muslim rule in India was somewhat beneficial to the lower castes in so far as Islam professed an egalitarian society. However, neither Islam nor the Bhakti movement of 14th and 15th centuries could seriously affect the existing social system, but it was the economic changes brought by the British which initiated the social change as witnessed today, including the Dalit awakening.22

2.10 Human Rights in Colonial India

During colonial rule a strong resistance against foreign rule manifested in the form of demand for fundamental freedoms, civil and political rights for the people. In India, humanitarian ideas became popular from the beginning of the 19th century. The abolition of Sati (1829), Abolition of Slavery (1812), Female Infanticide (1830), the formation of the Torture Commission in the Madras presidency (1855), introduction of widow marriage by legislation (1856) and prohibition of Child Marriage (1929) were restraints imposed on tradition and the beginning of humanitarian legislation.23 Due to the stiff resistance put forward by Indians, the British government passed the Charter Act of 1813 which promoted the interest of the native inhabitants in India. The
Act also allowed Indians to enjoy some political rights. For preserving the rights of female children, the Age of Consent Act of 1891 and the abolition of Child Marriage Act of 1929 were passed. These humanitarian legislations prepared the ground for an awareness of human rights during the modern period.

The strong demand for fundamental rights came in the wake of the nationalist movement with the birth of Indian National Congress in 1885 and the demand became more intense. The Indian National Congress struggled to protect the rights of the Indian people. All great leaders like Mahatma Gandhi, Motilal Nehru, Jawaharlal Nehru, Subhash Chandra Bose and so on strongly argued for the rights of the Indian people and condemned the British rule for depriving the people of rule of law in India. Moreover, the Home Rule Movement also demanded a Constitution guaranteeing every citizen the basic human rights like freedom of expression, right to property, equality before law, etc. The Motilal Nehru Committee Report of 1928 was a turning point in the history of the rights of Indians and it stood for the protection of the fundamental rights. The Lahore Congress of 1929 declared freedom from the alien rule as a fundamental right. The famous resolution on “Fundamental Rights and Social Change” adopted by the Indian National Congress in the Karachi session on 29th March, 1931 included a mention of fundamental rights. The Sapru Committee of 1945 stressed the need for a written code of “Fundamental Rights’’ and the Constituent Assembly raised a concrete demand for the inclusion of human rights in the Constitution.24

2.11 Human Rights and the Indian Constitution

The Constitution of India elaborates in great detail the rights of the people when we consider the different constitutions of the world. Drafted at around the same time as the Universal Declaration of Human Rights (1948), the Indian Constitution captures the essence of human rights in its Preamble, the different sections on Fundamental Rights and Directive Principles of State Policy.

The Fundamental Rights enumerated in Part III of the Indian Constitution have very well been described as the Magna Carta of India.25 They are deemed essential to protect rights and liberties of the people against the encroachment of the power delegated by them to their government.26 The Fundamental Rights guarantee certain rights to the individuals, whereas, the Directive Principles give direction to the
state to provide certain conditions which would promote human rights. Speaking about the importance of fundamental rights, Justice P. N. Bhagawati observed while delivering historical verdict in *Maneka Gandhi v. Union of India* that “these fundamental rights represent the basic values cherished by the people of this country (India) since the Vedic times. They are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a ‘pattern of guarantee’ on the basic structure of human rights, and impose negative obligations on the state not to encroach on individual liberty in its various dimensions.”

The rights which are guaranteed by Articles 19, 21 and 31 are guaranteed against state action as distinguished from violation of such rights by private individuals. In the case of violation of such rights by private individuals, the person aggrieved must seek his remedies under the general law as laid down in *Samdasani vs. Central Bank*. But where the claim of a private person is supported by a state Act, executive or legislative, the person aggrieved may challenge the constitutionality of the state Act which supports the private claim. *(Kochunni K. K. Vs. State of Madras (1))* While the right created by statute may be taken away by another statute, a fundamental right guaranteed by the Constitution cannot be taken away by a statute. *(Pannalal Binj Raj vs. Union of India)*. Article 13(2) of the Constitution says that the state shall not make any law which takes away or abridges the rights conferred in Part III and any law made in contravention of this clause shall, to the extent of the contravention, be void. In *Anthulay A.R. vs. Nayak R.C*, reported in All India Reporter 1988 SC 153, the Supreme Court laid down that a judicial decision or order which violates a fundamental right is void, even though it will be binding on the parties so long as it is not set aside in appropriate proceedings. Though the remedy under Article 32 is not available where the offending court is the Supreme Court itself, the court in the exercise of its inherent jurisdiction would review and set aside a previous direction given by the court which offended against a fundamental right, e.g., the natural justice, an ingredient of Article 14 or 21. In *Lalitha Jalan Vs Bombay Gas Company Ltd.*, the Supreme Court held that the award of sentence by the order of the court cannot amount to violation of any of the fundamental rights guaranteed under the Constitution.
Chapter II

The fundamental rights as incorporated in the Indian Constitution are classified under the following six groups:

(a) Right to equality (Articles 14-18)
(b) Right to freedom (Articles 19-22)
(c) Right against exploitation (Articles 23-24)
(d) Right to freedom of religion (Articles 25-28)
(e) Cultural and educational rights (Articles 29-30)
(f) Right to constitutional remedies (Articles 32)

The Constitution (Forty-fourth Amendment) Act, 1978 has omitted the subheading ‘right to property’ as a fundamental right as guaranteed under Article 19 (1) (f) and Article 31 of the Constitution, and hence Article 19(1) (f) and Article 31 have been omitted. However, the right to property is now considered to be not only a constitutional or statutory right but also a human right. Human rights have been historically considered in the realm of individual rights such as right to health, right to livelihood, right to shelter and employment, etc, but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even the claim of adverse possession has to be read in that context with the expanding jurisprudence of the European Court of human rights; the court has taken an unkind view to the concept of adverse possession. Therefore, it has to be kept in mind that the courts around the world are taking an unkind view towards statutes of limitation overriding property rights. This was decided by the Supreme Court in *P. T. Manichikkanna Reddy vs. Revamma*, reported in AIR 2007 SC 1753. Now right to property is a legal right enumerated in Article 300A of the Indian Constitution (chapter IV) and has effect from 20th June, 1979.33

However, the Supreme Court has dismissed a public interest litigation petition on 18th October, 2010 seeking a direction to make right to property a fundamental right. Though right to property was deleted by the 44th amendment in 1978, it was challenged only in 2007 in the context of acquisition of large extents of land for Special Economic Zones and the court issued notice to the Centre. The Right to property, which existed as a fundamental right on April 24, 1973 when the court
decision in ‘Kesavanda Bharati case’ was pronounced, was part of the basic structure and could not have been amended, leave alone deleted.  

In Article 32(1) the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights provided under Part III is guaranteed. In Article 32 (2) the Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, which ever may be appropriate, for the enforcement of any of the rights conferred under Part III. The sole object of Article 32 is the enforcement of the fundamental rights guaranteed by the Constitution.

The Supreme Court which is the apex court on land has jurisdiction to enforce the fundamental rights against private bodies and individuals and can award compensation for violation of the fundamental rights. It can exercise its jurisdiction suo motu or on the basis of Public Interest Litigation. This was emphatically laid down by the Supreme Court in Bodhitawat Gautam vs. Subhra Chankraborty reported in All India Reporter, 1996(1) SCC 490.

The fundamental rights enshrined in the Constitution are the replica of human rights guaranteed by the Universal Declaration of Human Rights, 1948 and the International Covenants on Human Rights, 1966. Therefore, curtailment, abridgement or violation of these rights is felt as an assault on the functioning of the democratic polity. India has also ratified the International Convention on elimination of all forms of racial discrimination in 1968, Convention against Torture and other cruel, inhuman or degrading treatment or punishment in 1977, the Convention on the Rights of the Child and the Convention on Elimination of all forms of Discrimination against Women in 1981.

The Directive Principles of State Policy are enshrined in Part IV of the Constitution (Articles 36-51). These Articles contain certain Directives which it shall be the duty of the state to follow both in the matter of administration as well as in the making of laws. They embody the aims and objects of the state under the Republican Constitution, e.g, that it is a ‘Welfare State’ and not a mere ‘Police State’. This novel feature of the Constitution is borrowed from the Constitution of Ireland which has been copied in turn from the Spanish Constitution. The Directives, however, differ
from the fundamental rights as the former are not enforceable in the courts and do not create any justiciable rights in favour of individuals.

There is no disharmony between the Directives and the Fundamental rights because they supplement each other in aiming at the same goal of bringing about a social revolution and the establishment of a welfare state, which is envisaged in the Preamble. The fundamental rights and the directive principles are the two wheels of the chariot as an aid to make social and economic democracy a reality.

The Directive Principles of State Policy are classified into: Social and Economic. Article 38(1) provides that 'the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall form all the institutions of national life.'

The State shall, in particular strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations. (The Article has been renumbered as Cl.(1) and Cl.(2) has been inserted, by the Constitution(44th Amendment)Act,1978.)

A. Social security Charter- Article 43-A requires the state to take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments and other organizations in any industry.

B. Community Welfare Charter- It contains the Organisation of Village Panchayats (Article 40), Uniform Civil Code for the citizen (Article 44), Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.(Article 46), Separation of Judiciary from Executive (Article 50), etc

Though these Directives are not enforceable by the courts, yet these principles have been declared to be fundamental in the governance of the country (Article 37). It is the duty of the state to apply these principles in making laws. Thus, India being a democratic nation, the framers of the Constitution enshrined innumerable provisions for human rights in the form of fundamental rights and certain guidelines too in the form of Directives for their proper protection.
2.12 Legislations on Human Rights

Later, Independent India which was committed to delivering more freedom to its citizens passed a series of legislations widening the horizon of freedoms and rights guaranteed to its subjects. Being a welfare state, Constitution of India was amended ninety seven times in order to secure a social order for the promotion of the welfare of the people. The Protection of Civil Rights Act, 1955 (Act No.22 of 1955) was a landmark in the history of Independent India in ensuring fundamental freedoms to its citizens. The passage of the Untouchability (Offences) Act, 1955 (Act 22 of 1955) had made untouchability a punishable offence and thereby protected the rights of the lower classes against the caste domination of the upper class in the society. Besides, laws were also made especially for women, children, Dalits, Scheduled Castes, Scheduled Tribes, other backward classes, prisoners and also vulnerable sections in the society. The Suppression of Immoral Traffic in Women and Girls Act, 1956 (Act No. 104 of 1956), the Protection of women from Domestic Violence Act, 2005 (Act No.43of 2005), Dowry Prohibition Act, 1961 (Act 28 of 1961), the Muslim Women Protection of Rights on Divorce Act, 1986 (Act No. 25 of 1986), the Maternity Benefit Act, 1961 (Act 53 of 1961), the Children (Pledging of Labour)Act, 1933 (Act 19 of 1934), the Employment of Children Act, 1938 (Act 26 of 1938), the Bonded Labour System((Abolition) Act, 1976 (Act No. 19 of 1976), the Equal Remuneration Act, 1976 (Act 25 of 1976) and the Prisoners Act, 1900 (Act 3of 1900). In addition to these legislations, Parliament had also passed the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to protect the rights of the Scheduled castes and Scheduled Tribes and to empower them in all respects. The Scheduled Tribes and Other Forest Dwellers (Recognition of Forest Rights) Act, 2005 (Act No. 2 of 2007) was intended to recognise and protect the forest rights of the Scheduled Tribes and other forest dwellers and to ensure their right to life on land in which they have the birth right.

The verdicts of the Apex Court on various occasions have also enlarged the ambit of fundamental rights. The Supreme Court of India observed that most of the fundamental rights are empty vessels in to which each generation must pour its content in the light of its experience. During the last more than half a decade, the Apex Court expanded their reach and ambit by the process of judicial interpretation.
There cannot be any distinction between the fundamental rights mentioned in Part 111 and the declaration of such rights on the basis of judgments rendered by the Supreme Court. Interpretation and application of constitutional and human rights have never been limited by the Supreme Court only to the black letter of law. Expressive meaning of such rights has all along been given by courts by taking recourse to creative interpretation which led to creation of new rights. By way of example by interpreting Article 21 of the Constitution, the Supreme Court has created new rights including right to environmental protection. The Supreme Court has in numerous cases deduced fundamental features which are not specifically mentioned in Part 111 on the basis of the principle that certain unarticulated rights are implicit in the enumerated guarantees. For example, freedom of information has been held to be implicit in the guarantee of freedom of speech and expression. In India, till recently, there was no legislation securing freedom of information.\textsuperscript{41} However, the Supreme Court by a liberal interpretation deduced the right to know and right to access information on the reasoning that the concept of an Open Government is the direct result from the right to know which is implicit in the right of free speech and expression guaranteed under Article 19(1)(a). This interpretation created a circumstance under which the Parliament enacted the Right to Information Act, 2005 (Act No. 22 of 2005). The Act has become a golden legislation of the Parliament to provide for setting out the practical regime of right to information for citizens and to secure access to information under the control of public authorities.

Eventhough a series of general welfare legislations and special legislations were made by the Indian parliament to protect and promote the rights of the citizens in the country, the very purposes for which these legislations were enacted did not bear fruit. The ‘Directive Principles’ became ‘decorative principles’ of the state. Hence the inevitability of making a comprehensive enactment conceiving the universal nature of human rights emerged which resulted in the passage of the Protection of Human Rights Act in 1993.

Of the enactments made for the better protection of human rights of all citizens in the country, the Protection of Human rights Act of 1993 (Act No 10 of 1994) has been a unique one. Provisions have also been made in the Act for the constitution of a
2.13 Protection of Human Rights Act, 1993 and the Human Rights Commissions

Under sustained criticism at national and international levels, the government of India passed the Protection of Human Rights Act, 1993 (Act 10 of 1994) (PHR Act, 1993). This has been enacted envisaging the significance and growing relevance of human rights in the present century. The Act contains vibrant ideas of human rights embedded in the Universal Declaration of Human Rights 1948, International Covenants and Agreements and the Constitution of India. The World Conference on Human Rights held at Vienna from 14th to 25th June, 1993 also paved the way for making such legislation. The Act came into force on the 28th day of September, 1993.

The Act has been amended in 2000 (Act No.49 of 2000) and 2006 (Act No. 43 of 2006).

2.13.1 The National Human Rights Commission (Section 3)

The Act “provides for the Constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for better protection of human right and for matters connected there to or incidental thereto.”

2.13.2 Appointment of Chairperson and Members

Dr. Shankar Dayal Sharma, the then President of India promulgated an Ordinance for setting up a National Human Rights Commission at the national level and the appointment of the members were made on 3rd October 1993 by him as per section 4 of the Act. This was made on the recommendation of a six member Committee consisting of (a) Prime Minister, (b) Speaker of the House of the people (c) Minister in-charge of the Ministry of Home Affairs in the government of India (d) Leader of the Opposition in the House of the People (e) Leader of the Opposition in the Council of States and (f) Deputy Chairman of the Council of States. The Protection of Human Rights (Amendment) Act, 2006(Act 43 of 2006) reduced the strength of the Commission in to three from five. Accordingly, the present NHRC consists of only three members including the Chairperson. The post of Chairperson was vacant since May, 2009 after the completion of the tenure by Shri Justice
Rajendra Babu and Justice G.P Mathur were officiating as its Acting Chairpersons. On retirement on superannuation, as Chief Justice of India on 11th May, 2010, Shri Justice K.G Balakrishnan has been appointed as the Chairperson on 12th May, 2010.

2.13.3 **Functions and Powers of the Commission (Section 12)**

The Commission is entrusted with enormous functions and powers as enumerated in Chapter iii namely:-

(a) to enquire suo motu or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court into complaint of-
   (i) violations of human rights or abetment thereof; or
   (ii) negligence in the prevention of such violation by a public servant;
(b) intervene in any proceedings involving any allegation of violation of human rights pending before a court with the approval of such court.;
(c) visit, notwithstanding anything contained in any other law for the time being in force, any jail or other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates thereof and make recommendations there on to the Government ;
(d) review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and make recommendations for their effective implementation;
(e) review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
(f) study treaties and other international instruments on human rights and make recommendations for their effective implementation;
(g) undertake and promote research in the field of human rights;
(h) spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means;
(i) encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
such other functions as it may consider necessary for the promotion of human rights.\textsuperscript{44}

Though the Commission was constituted for better protection of the human rights of all the citizens in the country, irrespective of their caste, colour, creed and sex, an analysis of its functions for the last seventeen years since its inception has caused sporadic anguish and concern among all sections of the community, particularly, the weaker sections and indigenous people.

A close analysis of the Commission’s Annual Reports reveal that in spite of the formation of the Commission and such other government agencies like National Commission for Scheduled Tribes, constituted as per Article 338 of the Constitution, the human rights of the Adivasis or Indigenous people who are the weakest sections living in the lowest strata of the society, are being continuously deprived of.\textsuperscript{45} It happens in the form of landlessness, land alienation, hunger, poverty, illiteracy, ill health, high drop out rate among school going children, weak empowerment of women and adding fuel to fire, the spiraling up of the crime rate of sexual abuses, sexual harassment, sexual violence and above all sexual exploitations etc. They always raise a question before the conscience of the society that they too are the human beings and as such have equal rights with the rest to lead a dignified life in their country. In this context any study regarding the human rights of Adivasis or Indigenous people and their violations in the light of the present day social realities is highly relevant.

In view of the discussions made in respect of the human rights violations in the international and national sphere, state of Kerala needs special reference in this regard. This will be incomplete if the class structure which existed in Travancore\textsuperscript{*} during the 18\textsuperscript{th} and 19\textsuperscript{th} centuries is not examined prior to analysing the violations in Kerala context.

\textbf{2.14 The Class Structure in Kerala During the 18\textsuperscript{th} and 19\textsuperscript{th} Centuries - A Profile}

The concept of ‘caste’ occupies an important role in the day today affairs of the Kerala society.\textsuperscript{46} Since the study deals with the people belonging to the lowest strata of the society- the Adivasis, it would be more relevant to know something about the class structure of the Travancore society during 18\textsuperscript{th} and 19\textsuperscript{th} centuries. At the
close of 18\textsuperscript{th} century, Kerala society was feudalistic in character. ‘Naduvazhis’ were the rulers. Majority of the land was under the control of Naduvazhis. They distributed the land to Janmies. The latter in turn gave the land to the cultivators. Moreover, the 18\textsuperscript{th} and 19\textsuperscript{th} centuries witnessed

The British colonialists initiating thoroughgoing changes in the Indian sub-continent. The consolidation processes under the patrimonial militarists regimes such as in 18\textsuperscript{th} century Travancore which preceded the colonial rule per se, also had subverted the caste domain which had, until then, formed the social relations in the various kingdoms of the region.\textsuperscript{47}

There was rigid caste system during this period in Kerala. Untouchability and inapproachability prevailed in society. The top echelons of the society were occupied by the Brahmmins while Nairs remained at the lowest level. Others were not even considered as human beings. They were not at all allowed to enter the places where even animals can be freely entered. They were not allowed to walk along public roads, go to schools or even go to temples.\textsuperscript{48} The Scheduled Castes and Scheduled Tribes who constituted nearly about ten percent of the population then were one of the most depressed and oppressed communities, and are still remaining more or less the same.\textsuperscript{49}

The economic condition of Kerala during this age underwent radical changes under the impact of the western civilisation. The establishment of British rule enabled the country to enter the world market. As a result of colonisation, the arts and crafts of the land fell into decay and the consistent policy of commercial and economic exploitation relentlessly pursued by Britain impoverished the masses. But British writers argued that what the country lost in one field was amply compensated by gains in other fields. If the Britishers were responsible for the decay of old handicrafts, wrote Percivall Spaear, they made possible the development of mechanised industry and brought the country within the orbit of the world economy.\textsuperscript{50} An American economic historian Daniel Thorner is of the opinion that the most significant change was the transformation of the rural economy which was the result of the introduction of new land system and the development of commercial agriculture. The British writer Barbara Ward suggests that though the British rule was launched, it did not complete the process of economic modernisation. Even though the works of the Missionaries helped a lot to mitigate the rigidity of the caste system in Kerala, as a matter of fact
the rigid class structure which existed during that period and its influence caused the situation of human rights violations more complex.

2.15 The Human Rights Violations- Kerala Context

The availability and enjoyment of human rights in Kerala during the early period may be analysed in the light of the socio-economic structures. Kerala is a state where the feudal system of land ownership was in practice.

In the early stage, there were some intellectual forces which were religious in nature and brought religious inequality in the Kerala society. A kind of religious slavery or discrimination had existed even among Gods and deities. In course of time, these religious forces got connected with kingship and the divine theory of kingship came into existence. The King declared that he is the representative of God and all the people should obey his order. It was here that intellectual slavery had begun and it further widened the human rights violations in the society. When the rule of the King became a reality, the ideological support for the rule of King was provided by the Brahmins. As a reward to their ideological support, the Brahmins were given the landed property in the form of gift by the King. The Brahmins wanted a group of people to work in their land. This resulted in the growth of a new class of agricultural workers who toiled in the land for the Brahmins and they had to live at the mercy of their masters. Along with this, huge violations of rights began to be committed by Brahmins. They also used other people for various works. Thus two different classes emerged namely, the Brahmin land masters and the non-Brahmin labourers.

But when Brahmins became the owners of land, tribal people lost their rights over land. The Brahmins became the owners of Brahmaswam and Devaswam (brahmaswam refers to the land personally owned by Brahmins and Devaswam is the land donated to the temples by Kings and the people) and also the Jenmis of the land. The relationship between the upper castes and lower castes and other communities took the form of Jenmi- Kudiyen (owner-tenant) relation. This Jenmi-Kudian system rooted in Kerala’s social system has violated human rights of the lower castes. The higher castes dominated villages while the lower castes were tied to them in subservience-service relationships, patron-client relationships, land lord-tenant or creditor-debtor relationship.51
The then prevailing social morals also helped and assisted the violation of human rights. When lower castes and untouchables tried to assert their rights, they faced retribution and retaliation from the upper castes and the rich. Thus caste assumed a ferocious and barbarous form in Kerala and by 17th century, it became abject and humiliating to everyone in varying degrees. The practice of untouchability had a high position in Kerala society during 19th century. There were many areas where untouchability was practiced as in hotels, temples, religious processions and ceremonies, social mixing, economic and social activities.

Slavery was another social institution in medieval Kerala which also paved the way for human rights violations. The outcastes like the Parayas and Pulayas were sold in slave markets in Kerala. They were forced to work hard for their masters and were denied education and other social privileges. The denial of human rights and fundamental freedoms is not only an individual and personal deprivation, but also creates conditions of socio-political unrest, sowing the seeds of violence and conflict within the society. The ghee-ordeal system that prevailed in ancient days for the dispensation of justice was very crude and most unscientific. Ordeals were often so severe that in many cases they meant nothing less than atrocious and in human torture.

Till about the middle of the 19th century, trial by ordeal was practised in Travancore. The ceaseless efforts of the Christian missionaries and the humanitarian attitude of the British Residents led to the abolition of this barbarous practice later. 52

The invasion of Haider Ali and Tipu Sultan witnessed a series of human rights violations in Kerala. The Mysoreans persecuted the Hindus of Malabar and forcibly converted them into Islam. The people of Malabar were severely persecuted by them and the lower caste people had converted themselves into Islam in order to escape from the rigidity of the caste system.

The society in Kerala had witnessed very severe forms of human rights violations during the British rule. The occupation of Malabar and other parts of Kerala by the British East India Company brought about popular discontent among the people. The Company introduced martial law in Wayanad. The ruthless exploitation of the natural resources by the company culminated in popular revolt against its authority. 53 Many patriots of Kerala like Pazhassi Raja and Velu Thampi Dalawa came to the forefront in taking up arms against the colonial masters. Pazhassi Raja
fought bravely with a view to upholding his rights over the Kottayam Dynasty. He tried his best to consolidate his family’s traditional rights over Wayanad.

In the revolt against the British, Pazhassi Raja was supported by the ‘Kurichiars’ of Wayanad. The Company introduced martial law in Wayanad for suppressing these revolts. At one stage Col.Wellesley came to Malabar to design a strategy against the rebels. His plan was to corner the rebels into Wayanad. The ‘Kurichia’ and ‘Kurumba’ had formed a major part of the militia of the Raja. This shows the bravery of the tribal people of Wayanad coupled with the spirit of patriotism.

The social revolution of the late nineteenth century and the early decades of the twentieth century paved the way for liberating the suppressed classes. Kerala is generally known for its long and distinguished history of progressive and people oriented movements. The people of Kerala were aware of their rights even from the early ages. Many human rights agitations in Kerala like Vaikkom Sathyagraha, Guruvayoor Sathyagraha, Shanar Revolt, Kallumala Agitation etc. have brought the question of human rights of the depressed classes to the forefront of Indian politics. Those movements brought an awareness of human rights and awakened a sense of social cohesion among the people of Kerala.

Thus there were numerous instances of human rights violations in Kerala up to 1946. In Travancore, Cochin and Malabar, the agitations spearheaded by the people were suppressed by the regional authorities with the help of the British. Among violations at the state level, custodial violence prevails over others in Kerala.

However, interalia among the nasty human rights violations in the Kerala society, custodial violence and custodial deaths stand at the top.

2.16 The State as Violator of Human Rights

Brutality in custody is the most reprehensible act of human rights violations. During the beginning of the formation of the state of Kerala, numerous cases of custodial violence had occurred in the state, but everything was kept in police cupboards. Most cases of custodial deaths were usually written off by the police as suicides. But, when the democratic machinery became operational in Kerala with strong opposition party, the incidence of torture was unraveled one after another. The most brutal forms of torture and human rights violations were seen by the state during
the period of Emergency. Arrests, tortures and killings were widespread. The families of the victims were kept in the dark as the press was muscled during the emergency.

The police employed unfair methods to elicit confessions and get money from the people. They used ‘third degree’ methods in lock-ups; committed custodial torture and even murder.\(^54\) Moreover, no action was taken in most of the cases, because these violations were committed by the protectors of human rights themselves. This evil became much worse, barbarous and brutish during the period of Emergency in India, which was declared by the then President Fakruddin Ali Ahamed on 26\(^{th}\) June, 1975 under the Prime Ministership of Mrs. Indira Gandhi.

During emergency, 12 satyagrahis were severely beaten up in Kannur by a police Inspector who carried the leader of the satyagrahis to a nearby ground and beaten him severely until he fell unconscious, leaving a constable to prevent people from giving any first aid.\(^55\) Thus the police not only violated human rights but also neglected medical treatment to the needy.

The sudden spurt in cases of police excesses in the state always created anxious moments and headaches to governments for all the time. The Deccan Herald had reported on 6\(^{th}\) March 2000 that on 29\(^{th}\) February, 2000, the Thampanoor police picked up a medical student named Benoy from the East fort Bus station, Thiruvananthapuram ‘suspecting’ him to be a petty thief. He was thrown into the lock up at the Thampanoor police station (Thiruvananthapuram) and was tortured throughout the night. According to reports, a known criminal also ‘assisted’ the cops in interrogating the student.

The period of Emergency resulted in the huge curtailment of the fundamental freedoms of the citizens, the suspension of constitutionally guaranteed fundamental rights, and right of the Habeas Corpus and large scale arbitrary imprisonment of opposition leaders.

In Kerala, the ‘roller treatment’ is reported to have been frequently used. P.Rajan, an engineering student in the regional college of engineering, Kozhikode was a prey to the ‘roller treatment’ of the Kayanna police in unlawful custody at Kakkayam police camp in 1976. As a result of continuous torture with iron and wooden rollers, he died in police custody.\(^56\) The ‘Rajan Case’ still remains as a black
dot on the very forehead of the Kerala Police. Udayakumar aged 28 was reported to be another victim of brutal ‘roller treatment’ by the fort police, Thiruvananthapuram on 27\textsuperscript{th} September, 2005.\textsuperscript{57} The story of Rajappan who was a volunteer in the Forest Protection Force and a member of its audit committee in Kalvary Mount, Idukki, was not different. He died on 24\textsuperscript{th} February, 2008 while in the custody of the Kattappanna Police.\textsuperscript{58} A man called Babu, aged 58 died on 3\textsuperscript{rd} January, 2010 in the custody of the Kottakada police in Thiruvananthapuram was a glaring example of how the Kerala police can become the scourge of human rights.\textsuperscript{59} A case of custodial death occurred on 29\textsuperscript{th} of March, 2010 in which allegations of atrocities were raised against Palakkad North Town Police. The accused called Sampath in the sensational ‘Sheela Jayakrishnan murder’ case at Puthur, Palakkad, died in police custody on 29\textsuperscript{th} March 2010.\textsuperscript{60} The post mortem report revealed that he died due to severe torture inflicted on him while in police custody.\textsuperscript{61} The crime branch police investigated the case and filed a report in which twelve police personnel including the sub inspectors of police, Palakkad north and south police stations have been included in the list of accused. Meanwhile Murukesan, brother of the deceased Sampath had approached the High Court of Kerala demanding CBI (Central Bureau of Investigation) investigation in the matter and the court directed the state government to inform the progress of the investigation of the case by the crime branch.\textsuperscript{62} Later the state Home Minister while addressing a high-level meeting of senior police officials from across the state, held at Cochin observed that incidents of alleged police atrocities are on the rise in the state\textsuperscript{63}. He cited the case of ‘custodial death in the puthur murder’ case as a ‘blot on the police’s image’. On 25\textsuperscript{th} May, 2010 High Court ordered CBI investigation in to the custodial death of Sampath observing that ‘the investigation in the case by the state police has turned out to be a mockery with only perfunctory attempts to weave a seemingly plausible story of a torture while in police custody’. The court further observed that it was “shocking to realise that police lock-ups in the state had turned out to be ‘death chambers’. ” In the charge sheet filed before the court by the CBI, two senior IPS officers in the state have been arrayed as accused in the case.\textsuperscript{64}

Custodial deaths are relentlessly continuing even after thirty three years of the proclamation of Emergency. According to records tabled on the Kerala State Legislative Assembly, the state had not less than 207 cases of custodial deaths during
2001-2006. Most of the victims of torture and custodial deaths belong to traditionally 
exploited category of the society. There are five categories in this regard, namely, 
tribal or Adivasis, Dalits, Minorities, Other Backward classes and women in Kerala; it 
occurs mainly against tribals, backward classes and the non-creamy layer of the 
minorities. Custodial deaths have always caused a furore. A common feature noticed 
by Inquiry Commissions on custodial deaths was that in majority of the cases, the 
victims were either suspects handled up to the police stations at odd hours or those 
involved in petty thefts. There are several social factors which influence the police 
sub-culture with regard to torture in custody. No wonder even in the 21st century, 
when the idea of Community policing has been put into effect, people look at the 
police and the police stations with a nostalgic horror.

As regards atrocities on Adivasis, it is on the increase. In a case where an 
ailing Adivasi woman named Bindu was severely slapped on the cheek by the 
security employee on 19th December, 2008 in the Medical College Hospital, 
Thiruvananthapuram. She was hospitalised and admitted in the intensive care unit. 
Later the security employee called Yesudasan was suspended from service and a 
crime case was registered against him.

Following are the statistics of crimes against the Adivasis in Wayanad district 
obtained from the government authorities under the Right to Information Act.

Among the Adivasi families in Wayanad, 174 families are connected with 
forest/criminal cases. There are 59 forest cases and 115 civil/criminal cases 
registered against them. Majority of the forest cases (22) against the Adivasis are 
reported from Sulthan Bathery block. Besides, 32 civil/criminal cases are now 
pending against the Adivasis in the block. It is reported during the period from 
November 2008 to March 2010, that 309 cases involving atrocities against them in 
which there are 99 cases of assault, 50 rape cases, 23 cases of destruction of property, 
31 cases of violence against women in work places, 10 cases each of damage to houses 
and house lurking trespass, preventing passage and other 68 crimes under the 
Prevention of Atrocities Act. Majority of atrocity cases are reported in Sulthan 
Bathery block. Altogether 111 such cases are reported against the Adivasis during the 
avove said period. In Mananthavady block, 66 atrocity cases comprised of 18 cases of 
assault, 16 rape cases, 21 cases of violence against women are reported. In Kalpetta
block, of the 60 reported cases, 20 (assault), 21 (violence against women), 9 (rape), 8 (cases involving destruction of properties) are the major offences. In Panamaram block, 71 cases are reported in which majority are related to rape and assault. Moreover, 344 Adivasis in 279 families are victimised in atrocities and only 33 cases out of 134 are disposed of.

Besides, the death of an Adivasi youth named Moni in Pulpally in Wayanad district on 6th February, 2007 was another example of police cruelty. He was chased by the police in a case following which he happened to jump in to the river, Kabani and drowned to death. Even the Prime Minister of India criticised the state government for not vigorously enforcing the Scheduled Caste and Scheduled Tribe (Prevention of atrocities), Act, 1989 in the state. He made the comments following the reports of continuing atrocities against Scheduled caste and Scheduled Tribes in Kerala. He also expressed his deep concern over the conviction rate of cases of atrocities against the Scheduled Castes and Scheduled Tribes being less than 30 percent against the average of 42 percent for all cognizable offences under the Indian Penal Code. All the above facts indicate that human rights violations on Adivasis are on the increase.

In this context it is worthy to make a study also regarding the human rights violations occurring in other sections particularly among women in the Kerala society which often go unnoticed by anybody.

2.17 Women’s Rights- The Case of Kerala

The organised agitations of women in Kerala began in the context of the second World War. Various categories of women like labourers, farm workers etc. gathered together in Kozhikode in 1942 and stood strongly to support anti-fascist agitations.

In 1943, Kerala Mahila Sangham was formed with three fold aims namely, to organise women to save the country from fascist invasions, to line up women for the freedom of the country and to protect the people from starvations. Thankamma Krishna Pillai, Kamalakshi, Saraswati, Radhamma and Thankachi were the prominent women who took initiative in the setting up of women organisation. They began to fight along with men against feudal suppressions and for land and property.
Thousands of women in Malabar and Travancore actively participated in agricultural and industrial agitations.

The Yogakshema movement gave a great boost to the Namboothiri women to fight against social evils. In Travancore, Akkamma Cherian and Parvathi Ayyappan joined the bandwagon of the National Movement. Thousands of women had participated in the freedom struggle and became victims of torture by the state.

In 1935 All India Women's Conference was held in Thiruvananthapuram. It was attended by Ammu Swaminathan, Aruna Asaf Ali, Anna Chandy and Margaret which provided great impetus to the voices of women's rights. In 1938, Rosamma and Akkamma Cherian were arrested and put behind bars and assaulted. Soon after, many women organisations like ‘Prajodana’ in Thiruvananthapuram, ‘Bodhana’ in Kozhikode, ‘Manushi’ in Pattambi, ‘Chethana’ in Thrissur, ‘Grameena Vanitha Sangham’ in Thiruvalla and ‘Prabhudhatha’ in Kanhangad sprang up.

Adivasi women had also become victims of atrocities in a literate state like Kerala. Their condition was deplorable to say the least. They began to fight for land rights, despite facing problems like starvation deaths, unemployment, sexual exploitation and even diseases. Of late the Adivasi agitations are led by C.K. Janu, an Adivasi leader. In 1992, she presided over south zone Adivasi Sangham, which was attended by over ten thousand Adivasis. In 1994, she represented Kerala in the United Nations Conference held in Geneva and presented the problems of Adivasis. Thus she tried to bring to light the sexual exploitations on them and also such other violations of human rights among Adivasis.

Though the women of Kerala are far ahead from the rest of India in education, issues like forced divorce, dowry harassment, employment rackets and husband's alcoholism haunt them. The high achievement of Kerala women in the field of education and health is not reflected in their power in critical areas like the family and the political process. Consequently, in the matter of dowry deaths, domestic violence and atrocities against women, Kerala is in no way better than other Indian states where women are much backward in education and health.

In Kerala there are a good number of women’s groups or organisations which are working in the areas of development, action, research, documentation,
empowerment and mobilisation of women in Dalit, tribal, rural and fishing communities. They are ‘Kizhakkumkara Mahila Samajam’, ‘Dalit Women's Society’, ‘Sakhi Resource Centre for women’, Thiruvananthapuram, ‘Coastal Women's Forum’ and ‘Kerala Sthreevedi’. These organisations having no political clout are committed to the cause of building a gender just society in Kerala.

The development programme for Kerala women always had the general objective of improving their status, especially in the rural areas, so that their contribution to the national economy and the well being of families would be enhanced. But the lack of proper planning and monitoring of many projects and programme for women have retarded their progress. Today, the role and status of women in Kerala have improved much more than before as the People’s Planning and Campaign Programme in the state has created tremendous scope for women's welfare. The nature and forms of violence is intertwined with physical, mental and psychological aspects. It occurs regardless of age, marital status, caste, religion, culture and class or income level. But mostly women of lower castes and lower income become the victims of human rights violations. However, women belonging to fishing community, Dalits and Adivasis are the worst victims of human rights violations.

There are three major atrocities which deal with the violation of women's rights. They are; Physical or sexual atrocities, police atrocities and domestic atrocities. Crime against women is mainly based on rape (Section 376 IPC), sexual harassment and abduction (Section 363, 373 IPC), Trafficking (Suppression of Immoral Traffic in Women and Girls Act, 1956), Indecent Representation (Indecent Representation of Women Prohibition Act, 1986 and molestation (Section 354 IPC). In addition to this, women are facing sexual harassment at workplaces, public places, Jails and sexual abuse at rehabilitation centres, police stations, homes and also facing dowry related violence. The ‘hidden camera’ incident occurred at hotel ‘Sagara’ in Kozhikodu on 8th March, 2010 has proved that women are not safe even in toilets. According to the statistics of the State Crime Records Bureau (SCRB Kerala, Thiruvananthapuram) a total number of 9706, 9381 and 3156 cases in respect of cruelty towards women were registered respectively for the years 2007, 2008 and 2009 (up to April) under the category of offence; rape, molestation, kidnapping, eve-teasing, dowry deaths, cruelty
of husbands and relatives and other offences. In this regard the role of Kerala Women’s Commission needs special mention.

2.18 The Role of Kerala Women’s Commission (Kerala Vanitha Commission) in Women’s Issues in Kerala

As per Section 5 of the Kerala Women’s Commission Act, 1995 (Act 17/1995), The Kerala Women’s Commission (KWC) was constituted on 14th March, 1996. The Commission consists of a Chairperson and four other members.

As per section 16 and 17 of the Act, the Women’s Commission is entrusted with various functions such as to protect rights and dignity of women, to uplift their status in the society, to find out solutions after making enquiries in respect of atrocities towards them, to enquire the denial of justice to them, ensure women empowerment and women equality and to give recommendations to state government. By virtue of the Act, the Commission has to prepare its Annual Report every year and submit it to the government. Accordingly, the functioning of the Commission and its achievements are detailed in the Annual Reports.

On a perusal of the Annual Reports for the last 5 years since its inception and interview with the Chairperson and the Members it is found that the Kerala Women’s Commission has been playing a very decisive role in matters relating to women issues in the state and succeeded a lot in achieving its objectives despite criticisms.

(a) The problems of women entrepreneurs,-

The Commission has undertaken research projects and studies regarding the issues relating to female entrepreneurs in the state and has given effective recommendations to the state government.

(b) Issues relating to widows in the state,-

The Commission found from its studies that the status of widows in the state is highly deplorable. The widows hailing from the lowest strata of the society are unceremoniously ousted from the mainstream of the society. They are tied up with the social ostracisms as in the past. The Commission recommended to the government that existing widow pension be increased and regularly paid on monthly basis, provide free medical treatment and to implement special employment package etc.
(c) Problems related to home nurses in the state -

Home nurses working in the state face with exploitation in all respects. The Commission found that less qualification, low income and poverty prompt them to continue in this field enduring all sufferings. The Commission has made recommendations to the government that Capacity Building Training Programme should be implemented for home nurses; to ensure minimum wages to them and to implement terms and conditions of service etc. 81

(d) Impact of ‘Mysore marriages’ in Kerala -

The Commission has also made recommendations in respect of the problems of interstate marriages. ‘Panchayat Jagratha Samithis’ shall enquire the details regarding the bridegroom, proposed from outside the state. The Commission also found that legal awareness among Muslim women is very less in northern districts. They have been dissuaded in obtaining their rights due to little legal awareness.

(e) Problems of unwedded Adivasi women in the state -

The Commission has conducted studies regarding this grave issue and found that 50.47 percent of Adivasi women belong to the age group 20-25 in the state are subjected to sexual exploitation. These women are illiterate and coolies. The commission has made recommendations to prevent this social evil and rehabilitate them. 82

(f) Problems faced by women in construction sectors -

The Commission after studies and analysing their problems, recommended to the government (1) to ensure the inspection of labour officials in work places where women are working, (2) give proper direction to District labour officer (DLO) to ensure that basic facilities for primary needs are made available in work places, (3) give directions to DLO to ensure that they are equally paid with that of male workers. 83

(g) Issues relating to women in technical field -

The Commission also intervened in matters relating to working women in ‘Kudumbsree’, agricultural sector, non-resident Keralites, and nurses in private
sectors, IT sector, and economic and social problems of women who continued to be unmarried.

Besides, the Commission conducts Adalats, Seminars, legal literacy classes, camp sittings in various places, conducting ‘Kalalaya Jyothy’ in schools and colleges, conducting philanthropic activities in selected districts, establishing media monitoring cell, conducting awareness programmes against the use of alcohol and tranquilizing drugs, conducting short stay homes for destitute women and introduced emergent treatment schemes for poor women etc.

Among the recommendations made by the Women’s Commission to the government during 2007-08, the following are significant:

1. Compulsory blood test to males and females prior to marriage,
2. Amend the Code of Criminal Procedure, 1973 in order to facilitate the implementation of the law of maintenance more convenient,
3. Give priority to unmarried women, who have completed thirty five years of age and are enlisted in the rank list of the Public Service Commission for appointment,
4. Include in the school curriculum the adverse effect of the use of alcohol and such other drugs.

Despite its bright functioning, the Commission is handicapped with certain inherent defects. The appointment of the Chairperson and Members are made purely on political basis and as such the Commission is clouted with political loyalties and is unable to take any decision contrary to the interest of the ruling party.

India has an elaborate system of laws to protect the rights of women. However, there have been many obstacles to the realisation of women’s rights in India. Both religious and cultural patterns compel women to remain at home. This has significant impact on the socio-legal status of women in India.

Human rights index also indicates some other areas where human rights violations are incessantly occurring, are left unattended by the government or agencies thereunder or any body. Some of such areas are noticed; namely,-
2.19 The Labourers Working in the Unorganised Sector

In Kerala the construction area is on the boom. Labourers are imported from Tamil Nadu and West Bengal and they are forced to work under the most hazardous and dangerous atmosphere. They are denied minimum wages and safety measures and due to the latter various accidents are reported which are left always unnoticed by the authorities. About 50,000 of such labourers who have migrated from the neighborhood states are working in the state in the construction field. The trafficking among the labourers constitutes gross violation of human rights.

2.20 The Teachers Working in the Unaided Schools

The teachers, working in unaided schools in the state are facing serious violation of their basic human rights. The concept of equal pay for equal work and right of minimum wages guaranteed under Indian Constitution is an oasis to them. There are around 1000 recognised unaided schools functioning in the state with a total strength of 4000 to 7000 highly qualified teachers. They are denied minimum wages and are forced to work under adverse circumstances. Extracting the man power, they are being exploited by the organised management in the absence of collective bargaining from the former, which is the trademark of the organised sector. It is not an exaggeration to state that most of the school management procures from the teachers signed blank cheque leaf in advance even prior to the disbursement of their salary. In the Aquittance Roll though the salary of them is shown very high however the major portion of which will be withdrawn by the management by using the signed blank cheque procured from the teachers.

2.21 The Human Rights of the Old Age People

Due to the emergence of Nuclear families in the society, the problem of aged and destitute people became worse. Not only they are often left uncared and unattended in their own homes by the family members but also subjected to mental and physical harassment. As a result, the number of old age homes is coming up like mushrooms. The right of these people to live in peace in old age always turns out to be a curse to them in all respects.

Globalisation and the structural adjustment policies have downsized the state and it has adversely affected the marginalised sections of the society particularly the Dalits and Adivasis. It has sporadically widened the freedoms of corporations eroding
the powers and freedoms of people in their diverse community setting. As has been stated earlier, Indian Constitution provides social justice and equality to all the citizens and guarantees fundamental rights irrespective of caste, color, sex and religion. These rights are available to all citizens irrespective of whether they live in urban or rural or in forests. The forest dwellers who are otherwise known as ‘Adivasis’, ‘indigenous people’, ‘primitives’, ‘aboriginals’ and ‘natives’ are given certain special provisions in the Constitution especially in Article 46 in Part IV in the Constitution. It may be seen that despite the constitutional provisions, the formation of the Human Rights Commissions and such other organisations and the introduction of Community policing, human rights violations particularly on Adivasis have not abated, rather they are on the increase.

The human rights movements in India have moved beyond the usual civil liberty issues and have entered the arena of multifaceted struggles of the populations victimised by the current modes of development policies. The movement now assumes that human rights issues are involved not only when the state infringes a particular right of a citizen, but also in all situations which prevent individuals, or group of people, from staking their rightful claims to public resources. The need of the hour is to sensitize the people about human rights and their violations so that it becomes a people’s movement.

Modern ideas of development have changed the contents of human rights. There are new challenges to human dignity and peaceful existence. For instance; those relating to drinking water, housing and environment. Even the governments are finding it difficult to formulate a solution to these issues. It is a fact that globalisation has increased violence in society and women and the marginalised sections like Adivasis are its worst victims.
END NOTES


7. Ibid.

8. Ibid.


16. Ibid.
18. Ibid.
20. Ibid., 116.
21. Ibid., 11-12.
26. Ibid.
27. All India Reporter, Supreme Court, (1978): 597.
28. All India Reporter, Supreme Court, (1952): 59.
29. All India Reporter, Supreme Court, (1959): 725.
30. All India Reporter, Supreme Court, (1957): 397.
36. Ibid.
37. Ibid., 626.
38. Ibid.
41. Ibid.,


65. N. Jayapalan, *Human Rights*, 188.


70. Ibid., 25.

71. Ibid., 32.

72. Ibid., 50.


76. The State Crime Records Bureau, Kerala, Report (Thiruvananthapuram, 2009), 16.


79. Justice D. Sreedevi (Chairperson, Kerala Women’s Commission) in face to face with the Researcher, May 2, 2010.

80. Smt. Rugmini Bhaskaran (Member, Kerala Women’s Commission) in face to face with the Researcher, May 2, 2010.


82. Ibid.
