Chapter-I

INTRODUCTION

1.1 General

Human beings are rational. By virtue of being humans, they possess certain basic and inalienable rights, commonly known as ‘Human Rights’. They become operative with their birth. Human Rights, being the birth rights, are therefore inherent in all human beings irrespective of their caste, creed, religion, sex and nationality. Human Rights are sometimes referred to as fundamental rights, basic rights, inherent rights, natural rights and birth rights.

“Human Rights’ is a generic term, which embraces civil rights, civil liberties and social, economic and cultural rights. The idea of Human Rights is bound up with the idea of human dignity. Thus all those rights which are essential for the maintenance of human dignity are called Human Rights. These rights are essential for all individuals as they are consonant with their freedom and dignity and are conducive to their physical, moral, social and spiritual welfare.

Human Rights are generally defined as those rights which every human being is entitled to enjoy by virtue of being a member of human species. These are minimal rights which every individual possesses against the arbitrary actions of the state or other public authorities by virtue of his being a member of human family. The concept of Human Rights was not unknown to ancient Indian thinkers. There is a general impression that the concept of ‘Human Rights’ is of western origin. It can not be denied that the influence of liberal western philosophy played an important role in the formulation of modern liberal thought on Human Rights and Fundamental Freedoms, but it is right to consider it as a concept of western origin. The rights of man have been the concern of all civilizations from times immemorial.

The first documentary use of the expression “Human Rights” was found in the charter of United Nations which was adopted at Sanfrancisco after the Second World War on 25th June, 1945 and ratified by a majority of its signatories. The charter of the United Nations is a multilateral treaty and creates legally binding obligations for all
the members of the United Nations. It contains a number of provisions concerning Human Rights. Safeguarding the basic Human Rights is one of the main objectives of the United Nations. With this concern on Human Rights there is a marked change in the preamble of the charter. It is the involvement and concern of the “peoples of the United Nations” rather than that of the “High contracting parties” interalia “to reaffirm faith in fundamental Human Rights, in the dignity and worth of the human beings in the equal rights of men and women…..”. The movement of modern Human Rights in International law thus started with the establishment of the United Nations and continues with vigour even to this day.

In 1948, the General Assembly adopted the Universal Declaration of Human Rights. It is a basic declaration of the commitment of the International community to Human Rights and Fundamental Freedoms as a common standard of achievement for all people and for all Nations. It is a message to all who are committed to Liberty, Freedom, Equality, Justice, Peace and Tranquillity in the world. Although the declaration does not have the binding force of a treaty, it has acquired universal acceptability. Many countries have either cited the declaration or included its provisions in their basic laws or constitutions. Many Human Rights Instruments since 1948 have been built on its principles. The spirit of the Universal Declaration of Human Rights has also influenced various National constitutions, National Legislations, Regulations and Policies that protect and promote Human Rights and Fundamental Freedoms.

There cannot be an International Protection of Human Rights unless there is a strong and effective machinery for its implementation. It is the key to making the system of International Protection of Human Rights effective. The major lacuna in the Universal Declaration of Human Rights is lack of the machinery for the enforcement of Human Rights. That deficiency was sought to be removed by adopting two International covenants namely International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights for the observance of Human Rights in the year 1966, which were addressed to the states to implement them by legislation. The United Nations have created a global structure for protecting Human Rights. The organizations work on Human Rights is carried out by two bodies namely Charter-based Human Rights bodies and Treaty-based Human
Rights bodies, aimed at advancing democracy, Human Rights and the rule of law through out the world. The Charter-based bodies include General Assembly, Security Council, Economic and Social council, Trusteeship Council, International Court of Justice and the Secretariat and other U.N Bodies primarily concerned with the Human Rights which were established by the United Nations organs for the better enforcement of Human Rights and Fundamental Freedoms.

The General Assembly Resolution 60/251 mandates a Universal Periodic Review of each state's fulfilment of its Human Rights obligations and commitment. The General Assembly and the Economic and Social Council has contributed much for the Protection of Human Rights through its various commissions and bodies. For long the nearest approach machinery for the supervision of the problem of protection is the Economic and Social Council in 1946. In 2006 the growing unease with the way in which the commission functioned led to its replacement by the “Human Rights Council” consisting of 47 member states. The United Nations High Commissioner for Human Rights in 1994 established a Hotline, a 24 hour facsimile line which is available to the victims of Human Rights Violations, their relatives and NGOs. The International Court of Justice repeatedly quote the Human Rights provisions of the UN Charter, which paved the way for the development of International Human Rights jurisprudence catering to the needs of the society.

Several U.N Human Rights treaties establish monitoring bodies to oversee the implementation of the treaty provisions by state parties and examine the reports of the signatory Nations submitted under the treaty. These include, The Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on Elimination of Discrimination Against Women, the Committee Against Torture, the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, the Committee on the Protection of all Migrant Workers and Members of Their Families and the Committee on the Rights of Persons with disabilities.

At the regional level, Human Rights Protection Systems are developed independent of the United Nations. The most advanced is the European Human Rights System which gives an individual the right to present cases of alleged violations of
Human Rights to the European Court of Human Rights. The various functions of the system are allotted to committees, to the chambers of the court and to the grand chamber of the court. In Inter-American Human Rights System, the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights are playing an important role, although the judicial means at their disposal are not so advanced as those of the European Court of Human Rights. The African Human Rights system is based on petitions which may be presented to the African Commission on Human and Peoples’ Rights. The organisation of African Unity (OAU) attempted to follow the example of other systems and established an African Court on Human and Peoples’ Rights, which was adopted by the OAU in 1997 and it has not yet been in force for want of ratification. In addition to the above, the Arab Commission on Human Rights was setup as a sub-committee of the League of Arab States to promote Human Rights in the Arab States.

The philosophy of Human Rights and Fundamental Freedoms were incorporated in the constitution of India in the preamble and in the chapters of Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. Of the three organs of the Government, the judiciary has become a vanguard of Human Rights in India. It performs this function mainly by innovative interpretation and application of the Human Rights provisions of the constitution. The Supreme Court of India and the High Courts of the States have independent power under the constitution to enforce the Fundamental Rights and they have liberally interpreted these powers. The major contributions of the judiciary to the Human Rights jurisprudence have been twofold: (a) The substantive expansion of the concept of Human Rights under Article 21 of the constitution and (b) the procedural innovation of Public Interest Litigation.

into two categories connote that they were influenced by the provisions of the constitution of India. Moreover Indian constitution was amended form time to time for the better promotion and Protection of Human Rights and Fundamental Freedoms.


The Indian Parliament has enacted various legislations which seek to protect and promote the Human Rights of vulnerable sections of the society like disabled, women, children, minorities, scheduled castes, scheduled tribes and backward classes and many more. In addition to the above machinery, the central government also constituted various commissions for the welfare of the weaker sections of the society namely Women, Minorities, Children, Backward Classes, Scheduled Castes, Schedule Tribe and Safaikarmacharis.

1.2. Statement of the Problem

Human Rights have a special significance in the changing world scenario, especially in the post world war democratic era. The post world war era has witnessed the rapid development of Human Rights culture. However violations of Human Rights continued to exist in a large scale in most of the counties of the world. It is indeed a tragedy on human dignity and honour and is a cause of deep concern. Human Rights violations, whatever be the level, is a heinous crime against the society and so it is a grave problem concerning the entire human race. Today, there is a need of a strong society based on the fundamental Human Rights and Fundamental Freedoms in theory and in practice.
The modern society is witnessing a continuous violation of Human Rights in a systematic manner. Unfortunately most of the Human Rights violations which remain either insufficiently recorded or entirely unrecorded include exploitation of children and prisoners, bonded labour and custodial violence, encounters, discriminations on the basis of caste etc. At this juncture the courts are putting vibrant efforts to translate the constitutional philosophy of the Human Rights Jurisprudence into reality. Mere guarantee of Human Rights is useless unless there is an effective machinery to enforce it. Majority of the International Human Rights Instruments and the constitutions of respective countries provide Human Rights enforcement machinery for better promotion and Protection of Human Rights. These Instruments impose mandatory duty on the state to promote and protect the basic Human Rights and Fundamental Freedoms. The domain of human right is even expanding in India. Many laws have been enacted and many institutions and organisations established to ensure better promotion and Protection of Human Rights. This study analyzes the importance of Human Rights enforcement machinery and the role of the Supreme Court in promotion and Protection of Human Rights with reference to the Judicial Pronouncements.

1.3. Objectives of the Present Study

The following are the specific objectives of the present study:

1. To study the historical evolution of the basic Human Rights Jurisprudence
2. To analyse the Human Rights provisions of International Human Rights Law and Indian Human Rights law.
3. To examine contribution of International Human Rights Enforcement Machinery for promotion and Protection of Human Rights.
4. To examine the nature and scope of the Protection of Human Rights Act, 1993 and also to assess the role of National Human Rights Commission in securing the respect for Human Rights
5. To evaluate the role of the Supreme Court in the Promotion and Protection of Human Rights in the lights of its pronouncements.
1.4. Hypotheses

The major hypotheses guiding this investigation are:

1. The United Nations Provide a good background to promote respect for Human Rights
2. Human Rights enforcement under International Law yields good results for the promotion and Protection of Human Rights.
4. The constitutional and statutory efforts to combat the menace of the violations of Human Rights have succeeded to some extent to secure obedience of the law enforcement machinery to Human Rights.
5. The Indian Supreme Court is playing an important role in protecting the Human Rights of the prisoners and weaker sections of the society.

1.5. Methodology and Limitations of the Study

The present study is purely doctrinal and is based on both primary and secondary sources of data. Primary data includes International Human Rights Instruments, Human Rights Legislations, the Constitution of India, the decisions and Judgements of the Supreme Court and State High Courts on various Human Rights issues. Secondary data includes Articles, Periodicals, Published Books on Human Rights and Lectures by eminent Jurists. The study is limited to analyse how Human Rights are being protected by different enforcement machinery in general and by the Supreme Court of India in particular.

1.6. Operational Definitions

For the purpose of present study, the definition of the term ‘Human Rights’ as given under Section 2(d) of the Protection of Human Rights Act, 1993 of India is taken into consideration. Section 2(d) of the Act defines ‘Human Rights’ means the rights relating to life, liberty equality and dignity of the individual guaranteed by the
constitution or embodied in the International Covenants and enforceable by courts in India”.

1.7. Organisation of the Study

In the light of the above said factors and discussions, “The Study on Human Rights Enforcement Machinery with Special Reference to Supreme Court of India” is divided into eight chapters.

The first chapter is “Introduction”. It acquaints us with what is proposed to be done and how it is proposed to be done. It also deals with the importance of the research problem, the objectives of the study, the hypothesis formulated and the methodology applied.

The second chapter entitled “Human Rights Jurisprudence: Historical perspective” deals with the evolution and development of Human Rights at the International and Indian scenario.

The third chapter namely “International Human Rights Law”, deals with the provisions and significance of the UN Charter and its International Covenants and Conventions on Human Rights in detail.

The fourth chapter entitled “Human Rights Law in India” deals with the nature and scope of Human Rights in the light of the provisions envisaged in the Constitution, the Protection of Human Rights Act, 1993 and various other Human Rights Legislations in India.

The fifth chapter, “Human Rights Enforcement Machinery under International Law” deals with the constitution, powers, functions and activities of the Human Rights Enforcement Machinery constituted under the various International Human Rights Instruments namely, Human Rights Enforcement Machinery under the UN Charter, Human Rights Enforcement Machinery under the various Human Rights Treaties and the Regional Human Rights Enforcement Machinery, for the promotion and protection of Human Rights.
The sixth chapter entitled “Human Rights Enforcement Machinery in India” deals with the analysis of Human Rights Enforcement Machinery constituted as per the mandate of the Protection of Human Rights Act, 1993. At this juncture the role played by the National Human Rights Commission (NHRC) and State Human Rights Commissions (SHRCs) for promotion and protection of Human Rights discussed in detail.

The seventh chapter namely “The Role of the Supreme Court of India in Enforcing Human Rights” deals with the role of Higher Judiciary in protecting and enforcing the Human Rights as envisaged in the in the International Human Rights instruments and the Constitution of India. It also deals with the evolution of Public Interest Litigation and its contribution in the protection of the Fundamental Rights and Directive Principles of State Policy. The role of the Apex Court in the area of domestic application of Human Rights norms is also discussed with special reference to certain trend setting judgements.

The eight and last chapter titled “Conclusions and Suggestions” evaluates the entire study and also proposes an agenda in the form of suggestions and recommendations to the policy makers for better promotion and protection of Human Rights.