

# PROTECTION OF HUMAN RIGHT : INDIAN PERSPECTIVE

### SYNOPSIS

- I. *The National Human Rights Commission*
- II. *The State Human Rights Commission*
- III. *The SC Commission*
- IV. *The ST Commission*
- V. *The National Commission for Women*
- VI. *The National Commission for Minorities*
- VII. *The Judiciary*
- VIII. *The Media*
- IX. *The N.G.O.*

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*"The amount of violations of human rights in a country is always an inverse function of the amount of complaints about human rights violations heard from there. The greater the number of complaints being aired, the better protected are human rights in that country"*

**- Daniel Patrick Monynihan**

The Indian context on the promotion and protection of human right at the national level, despite having numerous social and economic problems, most importantly its stark poverty, may be of some interest at

the international level, particularly to countries in Asia and Africa. India's experience may reveal with clarity that democracy, freedom and rule of law are not luxuries which only the western societies can afford.

Considering India's extensive territorial domain, the vastness of its population and the complexity of social structure, cases of violation of rights, whether attributable to the agencies of the State or to the private individuals or groups, may occur despite its best efforts.<sup>1</sup> It is pertinent here to highlight the problems in implementation of human rights.<sup>2</sup> They are as follows :

- (1) Human rights are evolving ideals which the human society cherishes, no nation in the world can verily claim to have lived up to these ideals.
- (2) Nations differ in the level of rights performance achieved, and often the level of rights performance is relatable to the level of economic development achieved.
- (3) The politics of human rights, both domestic and international often casts a veil of exaggeration, it not mendacity, on issues of human rights violations.
- (4) Wild allegations of rights violations must be distinguished from those supported by verifiable proof.
- (5) The problems of criminal law overlap those of human rights.

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<sup>1</sup> The magnitude of India's diversity is indicated by the 1991 census, which recorded a population of 879 million with growth rate of less than two per cent per annum (since the mid 1980s), while its linguistic diversity is reflected in the eighteen major languages which are recognised in Schedule VIII of the Constitution and the 844 dialects spoken by its people. Cf. Third Country Report submitted by India, CCPR/C/76/Add. 6, 17 June, 1996, pp. 3-4.

<sup>2</sup> V.S. Mani, "Human Rights in India : An Overview" (unpublished paper prepared for the Konrad Adenauer Foundation, Germany, 1997), pp. 1-63; Mahendra P. Singh, "Human Rights in the Indian Tradition : An Alternative Model" vol. II, no. 2 (2009), pp. 145-182.

- (6) Situations related to terrorism and threats to territorial integrity of a nation actively aided from across the border, it is at times difficult to sit in judgment as to the proportionality to use of force by the State against groups and individuals.

This chapter will examine the implementation mechanism available under the Indian Constitution keeping in mind these considerations. For a proper understanding of the implementation mechanism under the Indian Constitution, it is essential here to cover the crucial role played by judiciary, executive and legislature in implementation of human rights in general.

This Chapter will also cover enforcement provisions under the Indian Constitution, the recently established National Human Rights Commission, SHRC, SC Commission, ST Commission, NCW, NCM and the roles of NGOs and the Media in the implementation of Human Rights.

## **I. The National Human Rights Commission**

Respect for the dignity of an individual and striving for peace and harmony in society, has been an abiding factor in Indian culture. The Indian culture has been the product of assimilation of diverse cultures and religions that came into contact in the enormous Indian sub-continent over time. The international community has recognized the growing importance of strengthening national human rights institutions.

In the year 1991 a UN-sponsored meeting of representatives of national institutions held in Paris, a detailed set of principles on the status of national institutions was developed, these are commonly known as the Paris Principles. These principles, subsequently endorsed by the UN

commission on Human Rights and the UN General Assembly have become the foundation and reference point for the establishment and operation of national human rights institutions.

The Government of India did realize the need to establish an independent body for promotion and protection of human rights. The establishment of an autonomous National Human Rights commission by the government of India reflects its commitment for effective implementation of human rights provisions under national and international instruments.

The establishment of an autonomous Commission for promotion and protection of human rights by the Government of India reflects its genuine intention for effective implementation of human rights provisions under national and international instruments. The National Human Rights Commission<sup>3</sup> is the first of its kind among the South Asian countries.

The NHRC came into effect on 12 October, 1993, by virtue of the Protection of Human Rights Act, 1993. The Act contains broad provisions related to its function and powers, composition and other related aspects.<sup>4</sup>

Sec 2(d) of the Act defines Human Rights 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.”

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<sup>3</sup> The Commission was constituted by an Act of Parliament. The Act is divided into eight Chapters consisting of 43 Article. Special Powers conferred to NHRC under Article 10(c) which says, “The Commission shall regulate its own procedure”. There are 19 Articles under Procedural Regulations.

<sup>4</sup> See for details, The Protection of Human Rights Act, 1993 with Procedural Regulations (National Human Rights Commission, New Delhi, 1993). The Human Rights Act was amended in 2006.

Sec. 12(f) Mandates the National Human Rights of India to “Study treaties and other international instruments on human rights and make recommendations for their effective implementation”.

**(i) Constitution of the NHRC**

The Constitution of the NHRC is dealt under Chapter II of the Act. Section 31 Act says:

*Section 3*

1. The Central Government shall constitute a body to be known as the National Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to it, under this Act.
2. The Commission shall consist of:
  - (a) A chairperson who has been a Chief Justice of the Supreme Court;
  - (b) One Member who is, or has been a judge of the Supreme Court;
  - (c) One Member who is, or has been the Chief Justice of a High Court;
  - (d) Two Members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human' rights.
3. The Chairpersons of the National Commission for Minorities, the National Commission for the Scheduled Castes, the National Commission for Scheduled Tribes and the National Commission

for Women shall be deemed to be Members of the Commission for the discharge of functions specified in clauses (b) to (j) of section 12.

4. There shall be a Secretary-General who shall be the Chief Executive; Officer of the Commission and shall exercise such powers and discharge such functions of the Commission except judicial functions and the power to make regulations under section 40 B, as may be delegated to him by the Commission or the Chairperson as the case may be 5.
5. The headquarters of the Commission shall be at Delhi and the Commission may, with the previous approval of the Central Government, establish offices at other places in India.

The appointment of the Chairperson and other Members are elaborately discussed under Section 4 of the Act.<sup>5</sup> The other provisions relate to the removal of a member of the Commission,<sup>6</sup> the term of office of members,<sup>7</sup> a member to act as a Chairperson or to discharge his functions in certain circumstances, the terms and conditions of service of members, vacancies, etc., not to invalidate the proceedings of the Commission, the procedure to be regulated by the Commission,<sup>4</sup> the officers and other staff of the Commission.<sup>8</sup>

## **(ii) Functions and Powers of the Commission**

Wide powers and functions have been given to the Commission under Section 12. Paragraph (a) of Section 12 provides, that the

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<sup>5</sup> Ibid, pp. 3-4.

<sup>6</sup> Ibid., Section 5, pp. 4-5.

<sup>7</sup> Ibid., Section 6, p. 6.

<sup>8</sup> Ibid., Section 11, p. 6.

Commission can require *suomotu*<sup>9</sup> action against any public servant against whom complaint has been registered for violation of human rights.

Section 12(b) provides that the Commission can intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court. Section 12(c) empowers the Commission to visit any jail or other institution with prior intimation to the State Government, for the purpose of mainly monitoring prison or custodial conditions. The Commission can make recommendations to State Governments on the basis of such visits. The Commission observed after visiting many jails that there prevailed pathetic conditions in which prisoners are forced to live. In its view this is not due to lack of ideas but due to apathy and lack of priority accorded to prison conditions and the rights of prisoners and undertrials. The Commission has already initiated action to improve prison conditions in India, and started studying all prevailing reports related with prisons.<sup>10</sup> The Commission has recommended the preparation of a new All India Jail Manual and also suggested the revision of the old Indian Prison Act of 1894. The Commission sought help from all who believe that human dignity must not be left when a person enters the gates of a prison.<sup>11</sup>

Section 12(d) empowers the Commission to review the safeguards provided under the Constitution or any law for the time being in force for

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<sup>9</sup> The Commission took suo motu action on basis of press report on 12 January 1994 concerning the alleged tattooing the words "jebkatrf on the forehead of an alleged pick pocket by the Amritsar Police Personnel, Annual Report, National Human Rights Commission (New Delhi), 1993-94, p. 22.

<sup>10</sup> Report of the All-India Jail Manual Committee of 1957-59; the Report of the All-India Committee on Jail reforms 1980-83 chaired by Justice A.N. Mulla (popularly known as Mulla Committee Report); The Report of the National Expert Committee on Women Prisoners of 1987 chaired by Justice V.R. Krishna Iyer; the Report of the Group of officers on Prison Administration chaired by Sri R.K. Kapur in 1987. In addition to this the Commission remains mindful of the need for the country to abide by the United Nations Standard Minimum Rules for the Treatment of Prisoners of 1957.

<sup>11</sup> National Human Rights Commission, Second Annual Report, 1994-95 (New Delhi, 1994-95), pp. 12-16.

the protection of human rights and also recommending measures for their effective implementation.

Under Section 12(e) there is a separate provision to review the factors responsible for terrorism which inhibits the enjoyment of human rights and recommend appropriate remedial measures. Section 12(f) provides for study of all treaties related with international human rights instruments and making recommendation for their effective implementation.

Section 12(g)<sup>12</sup> provides for promotion of research in the field of human rights, Section 12 (h) empowers the Commission to spread human rights literacy among various sections of society and promote awareness of the safeguards available for the protection of these rights through publication, the media, seminars and other available means.<sup>13</sup> Section 12(i) empowers the Commission to encourage the efforts of non-governmental organisations working in the field of human rights. Lastly, Section 12(j) provides, "such other functions as it may consider necessary for the promotion of human rights.

### **(iii) Investigation Division**

There is a well organised investigation division within the Commission. The primary duty of this investigation division is to look into complaints received by the Commission. For this purpose investigation team makes on the spot investigation.

The Protection of Human Rights Act, 1993 outlines the investigative role of the Commission. Section 11(1)(b) of the Act provides:

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<sup>12</sup> Seen. 125, p. 7.

<sup>13</sup> Report, n. 135.

*"Such police and investigative staff under an officer not below the rank of a Director General of Police and such other officers and staff as may be necessary for the efficient performance of the functions of the Commission".*

## **Inquiry into Complaints**

A considerable increase in public awareness of the work of the Commission has been observed. This was reflected in the vast increase in the number of complaints of human rights violations received by the Commission.<sup>14</sup> Many of the cases received by the Commission were of great poignancy, but they could not be entertained by the Commission falling as they did under the categories listed in Regulation No. 8<sup>15</sup> of the Commission.

Once the Commission accepts a complaint, it seeks comments from the concerned government or authority regarding the complaint.<sup>16</sup> After receiving the comments of the concerned authority a detailed note on the merits of the case is prepared for the consideration of the Commission. After this, directions and recommendations of the Commission are communicated to the concerned government under sections 18 and 19 of the Act.<sup>17</sup>

In some of the cases the Commission may opt for a personal hearing to the petitioner or any other person on behalf of the petitioner for appropriate disposal of the matter. This personal hearing will provide an

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<sup>14</sup> Currently, 29,179 complaints attracted the consideration of the Commission. The Commission has disposed off 4013 cases with directions by the Commission to the appropriate authorities for action at their end by 19 July, 2013. Available at <http://www.nhrc.nic.in> visited on 19 July, 2013.

<sup>15</sup> Under this regulation, the Commission had decided not to entertain cases relating to (a) events which happened more than one year before the making of the complaint, (b) matters which are sub judice, (c) those that are vague, anonymous or pseudonymous, (d) those that are frivolous in nature, or (e) matters which are outside the purview of the Commission.

<sup>16</sup> Section 8(7) of procedural regulation, n. 125, p. 27. 61

<sup>17</sup> Ibid., pp. 10-12.

opportunity of examining witnesses, if any, in support of the complaint and hearing of evidence in support of his stand.<sup>18</sup>

Once investigation has been undertaken by the Commission or any other person under its authority, the report of the investigation should be submitted within a week of its completion. In some cases, the Commission may allow further time for submission of reports. If the Commission is not satisfied with any report it may direct fresh investigation for ascertaining the truth or enabling it to properly dispose of the matter. On receipt of the report, the Commission on its own motion, or if moved in the matter, may direct inquiry to be carried out by it and receive evidence in course of such inquiry.<sup>19</sup>

Lastly under Section 8(12), the Commission or any of its members when requested by the Chairperson may undertake visits for on-the-spot study and where such a study is undertaken by one or more members, a report thereon shall be furnished to the Commission as early as possible.

### **Steps after Inquiry**

On the completion of inquiry, the Commission may take any of the following steps under Section 18 of this Act, namely:

- (1) Where the inquiry discloses, the commission of violation of human rights or negligence in the prevention of violation of human rights by a public servant, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;

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<sup>18</sup> Ibid., Section 8(10), p. 27.

<sup>19</sup> Ibid., Section 8( 11) of the Act, p. 27.

- (2) approach the Supreme Court or the High Court concerned for such directions, orders or units as that Court may deem necessary.
- (3) recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;
- (4) subject to the provisions of clause (5) provide a copy of the inquiry report to the petitioner or his representative;
- (5) the Commission shall send a copy of its inquiry report together with its recommendations to the concerned Government or authority who shall, within a period of one month, or such further time as the Commission may allow, forward its comments on the report, including the action taken or proposed to be taken thereon, to the Commission;
- (6) the Commission shall publish its inquiry report together with the Comments of the concerned Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendations of the Commission.

The Commission has in several cases recommended prosecution of public servants responsible for violation of human rights, under Section 18(1) of the Act.<sup>20</sup>

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<sup>20</sup> The Commission has asked the Government of Pondicherry to prosecute five police constables found guilty of raping a tribal girl; Human Rights Newsletter, vol. 2, no. 1 (1995), p. 2; Due to the Commission's intervention prosecution has been initiated against the accused persons responsible for the murder of two women belonging to the scheduled castes, Govindammal and Boopathy, mother and sister respectively of a certain Veluswamy in Puduchatiram village, Salem District, Tamil Nadu, Human Rights Newsletter, vol. 2, no. 3 (1995), p. 3; upon the recommendation of the Commission, a case under section 302 IPC has been registered against a police constable for the alleged murder of Sariful Hussain alias Babu Hussain in police custody, Human Rights Newsletter, vol. 2, no. 4 (1995), p. 2; The

In case of violation of human rights, the Commission may recommend under Section 18(3) of the Act to the concerned State for grant of immediate interim relief to the victim or members of the victim's family.<sup>21</sup>

The Commission incorporated elaborate provisions under Section 18(5) on procedural regulations, to make its inquiry more transparent and impartial. After the completion of its inquiry the Commission generally sends its report along with recommendations to the concerned government to report and comment within a period of one month, or such further time as the Commission may allow. This recommendation also includes what action should be taken in particular case or purport to be taken.

Lastly, Section 18(6) stipulates that the Commission should publish its report in detail. It must include the comments of the government or

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Commission recommended prosecution of forest officials who were involved in the killing of Ganeshan, in this case the Commission also recommended to the State Government that a compensation of Rs. 50,000 be paid to the next of kin of deceased. Human Rights Newsletter, vol. 2, no. 7 (1995), p. 2.

<sup>21</sup> Upon the recommendation of the Commission, the Tamil Nadu Government has sanctioned a sum of fifty thousand rupees as a compensation to the parents of fifteen year old b"oy Raja alias Murugan, Human Rights News letter, vol. 2, no. 2 (1995), p. 2; Compensation of Rs. 1 lakh was ordered for killing of Baljinder Singh by Punjab police, Human Rights News letter, vol. 2, no. 6 (1995), p. 4; The Andhra Government has sanctioned rupees fortyfive thousand for treatment of Kankatisail U., who sustained serious injuries at the hands of naxalites. Human Rights Newsletter, vol. 2, no. 6 (1995), p. 2; In a major move to bring about "quick and appropriate sensitisation of police personnel and others, the Commission has taken the view that compensation to be paid in custodial death cases should be borne by delinquent public servant and not by the State. First case, in regard to the custodial death of Anthoniswamy of Tamil Nadu, the Commission recommended that an interim compensation of Rs. 25,000 be paid within one month to the next of the kin of the deceased. In second incident, Babula Das of Orissa was taken into custody in connection with a case of theft. In view of the admitted position of the Orissa Government his death had occurred in police custody as a result of torture, the Commission recommended to the Orissa government to pay Fifty thousand as compensation to the next of kin of deceased. In the third incident, the Rajasthan Government in its report to the Commission accepted the fact that Teja Ram was taken into custody for recovery of a stolen TV set and he was held in detention for two days, later he died in police custody. The Commission, recommended compensation of twenty thousand should be paid to the next of the kin of the deceased. In all these three cases the Commission asked respective States to recover amount from delinquent police officials. Human Rights Newsletter, vol. 2, no. 11 (1995), pp. 2-3; on recommendation of the Commission, Bihar government paid one lakh rupees as compensation to Mrs. Ashima of Danapur Bihar whose husband was shot dead in the riots following demolition of Babri Masjid", Human Rights Newsletter, vol. 3, no. 1 (1996), p. 21. The Assam State Government sanctioned a sum of rupees fifty thousand as compensation to the kin of Gopal Gwala who died in police custody; Human Rights Newsletter, vol. 3, no. 2 (1996), p. 3.

authority. The report should also include what action the concerned government or authority is going to take in a particular case.

It seems from the above provisions that the Commission is fully equipped to handle any situation, but in practice the Commission is powerless, in case any State Government refuses to comply with its recommendations. The Commission is endowed with only recommendatory power, that is why the recommendations of the Commission are not legally binding. But so far, in most of the cases, recommendations of the Commission have been complied with by the concerned government or authority, which is clear from prosecutions<sup>22</sup> of several police officials, and compensation granted in various cases.

Being a government institution from the very beginning, people were suspicious about the functioning of the Commission. But within less than a three year period it has been able to establish its integrity and commitment. Through its work the Commission is able to convey the message that it can work independently; impartially and its recommendations prove this.

Even if the Commission is a very small step in the daunting task of implementation of human rights at the national level, it remains a very significant small step.

#### **(iv) Jurisprudence of the NHRC**

This section covers important decisions made by national Human Rights Commission of India (NHRC). Section 13(1) of the Protection of Human Rights Act stipulates that, NHRC has all the powers of a civil court. NHRC decisions can be divided into three categories:

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<sup>22</sup> See fn. 150.

- (a) Individual Complaints and suo motu Actions;
- (b) Intervening in Court proceedings;
- (c) The Court availing of the Commission's services to investigate in human rights violations.

**(a) Individual Complaints and suo motu Actions**

A large number of complaints fall under this category. The Commission, till 20 July, 2013, had received 29,179 complaints. Out of this the Commission disposed of 4013 with directions to the appropriate authorities for action at their end.<sup>23</sup> The large number of complaints received by the Commission reflects its growing popularity and faith among Indian masses. The complaints poured in from all parts of the country from individuals and organisations.

**Bijbehara Incident**

The Commission's cause celebre, was its very first case. On 1 November, 1993, it took cognisance suo motu of a press report which highlighted the death of sixty persons in and around Bijbehara<sup>24</sup> in Jammu and Kashmir, as a result of firing by security forces operating in the area. The Commission called for reports from the Ministries of Defence and Home Affairs as also from the Government of Jammu and Kashmir.

The Ministry of Defence clarified that army was not involved. The report submitted by the Ministry of Home Affairs was based on the Magisterial inquiry ordered by the State Government into the incident and

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<sup>23</sup> <http://www.nhrc.in> visited on 18 June, 2014

<sup>24</sup> Annual Report of National Human Rights Commission, 1993-94, pp. 1-12.

the Staff Court of inquiry ordered by B.S.F. authorities. The Commission made the following observations:

- (a) The Commission noted that disciplinary proceedings had been initiated under the Border Security Force Act against 14 members of the Force, and further that, on the basis of magisterial inquiry, steps may be initiated to launch prosecutions.
- (b) Payment was recommended of interim compensations on graded scale.
- (c) The Commission recommended that a thorough review should be undertaken by Government of the circumstances and condition in which Units of the Border Security Force are deployed and expected to operate in situations involving civilian population.

The above recommendations of the Commission were accepted by the Central Government. The Central Government further conveyed to the Commission that pursuant to the completion of the BSF Staff Court of Inquiry, Record of Evidence (ROE) proceedings against 14 personnel have been initiated.<sup>25</sup>

The Jammu and Kashmir government has given *ex-gratia* relief of one lakh each to the next of kin of the 31 civilians, who were killed in the incident. Further, an amount of Rs.25,000 each has been paid to 44 seriously injured persons, Rs.5,000 each to 26 persons and Rs. 1,000 each to five persons who sustained minor injuries.<sup>26</sup>

The Central Government has assured the Commission that the government is seriously concerned to ensure that harm to civilian life and

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<sup>25</sup> Ibid., p. 47.

<sup>26</sup> Ibid., p. 48.

property is effectively curbed. The government would continue to make its efforts towards the attainment of this objective.<sup>27</sup>

### **Alleged Custodial Death of Sri Shankshem Kharsaiot Followed by Death of Two Persons in Police Firing in Meghalaya**

The Commission took cognisance of this case on the basis of a news broadcast over AIR on 5 November, 1993. It was mentioned in the news that two persons died as a result of police firing on a crowd gathered outside Sohra police station in Cherrapunjee in Meghalaya. The people had gathered outside the police station to protest against the alleged custodial death of one Shankshem Kharsaiot. The Commission called for a report from Chief Secretary, Meghalaya regarding this incident. On 19 November, 1993, the State Government sent an interim report stating that Magisterial inquiry had been ordered in regard to the custodial death. The report also mentioned that a retired High Court judge was being requested to investigate the incident of police firing. Meanwhile, Rs.25,000 had been paid to the next kin of each of the deceased to meet funeral expenses.<sup>28</sup>

The Commission called for further report on the action taken by the State Government. The State Government sent a report regarding the custodial death of Shanskhem Kharsaiot on 15 January, 1994.<sup>29</sup> It was stated in this report that the Magisterial Inquiry had indicted the police officer responsible for the custodial death. The *ex-gratia* assistance of Rs.50,000 had been given to the next kin of the deceased and a near relative of the deceased had been given a government job on

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<sup>27</sup> Ibid., p. 49.

<sup>28</sup> Ibid., p. 12

<sup>29</sup> Ibid., p. 12

compassionate grounds.<sup>30</sup> It has mentioned in the report that an inquiry by a retired High Court judge has been going on with regard to the deaths resulting from the police firing.<sup>31</sup>

### **Alleged Custodial Death of Sri Chandrasekharan in Pondicherry**

This case was brought to the notice of the Commission by the Tamil Nadu State Legal Aid and Advice Board. It was alleged in this complaint that one Chandrasekharan<sup>32</sup> had died in police custody on 29 December, 1993. The Commission appointed Sri K.R. Gururajan, retired Vice-Chairman of Railway Claims Tribunal, Madras, to investigate the matter. While investigation was in progress, the Chief Secretary to the Government of Pondicherry reported that as a result of the Magisterial inquiry, the concerned police officers had been suspended and cases were registered against them under the relevant provisions of law. On perusing the report, the Commission decided that no further action was required on its part and the investigation ordered by the Commission was dropped.<sup>33</sup>

### **Alleged Death of Muhammad Akbar Sheikh in Armed Forces Custody, Baramulla District, Jammu & Kashmir**

The Commission received a complaint alleging the death of Muhammad Akbar Sheikh on 27 December, 1993, in the custody of armed forces.<sup>34</sup> Proceeding under Section 19 of the Act, the Commission called for reports from the Defence and Home Ministries. The reply of the Defence Ministry, forwarded a report from Army Headquarters.

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<sup>30</sup> Ibid., p. 12

<sup>31</sup> Ibid., p. 12

<sup>32</sup> Ibid., p. 14.

<sup>33</sup> Annual Report, n. 131, p. 17.

<sup>34</sup> Annual Report of National Human Rights Commission, 1994-95, pp. 36-37.

According to that report, the 15 Punjab Regiment was involved in an operation against militants on 27 December, 1993 around the village of Fatehgarh, Tehsil Barwah, District Baramulla. All male adults were collected at the local government high school. Muhammed Akbar Sheikh agreed to assist one of the companies of the unit in the matter of search. The search continued till morning. It was being conducted in the last week of December, 1993, and the weather was harsh. The report attributed the death of Muhammad Akbar Sheikh to exhaustion. After carefully analysing the report, the Commission observed that it was apparent that the deceased had been totally exhausted. Though the case was not one of custodial death, the situation was more or less akin to it.

Finally, the Commission directed the Ministry of Defence to pay Rs.50,000 as compensation to the legal heirs of the deceased. The payment was made to the legal heirs of the deceased by the Ministry of Defence.

### **Alleged Death of 125 Children in Phulbani District, Orissa, owing to Malnutrition, Malaria and Chicken Pox.**

The Commission took cognisance of a complaint alleging that some 400 children had died in Phulbani district as a result of acute malnutrition, accompanied by repeated attacks of malaria, chicken-pox and various water borne diseases.<sup>35</sup> The Commission asked for a full report from the State Government.

The Commission felt that the tragedy reflected the inability of the State Government to adequately educate tribal citizens, which was an obligation of the State Government under the Constitution. Therefore, the

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<sup>35</sup> Ibid., pp. 39-40.

Commission recommended that the State Government pay, within a month, a sum amounting to Rs. 6,52,000 to the 125 tribal families whose children had died. However, the State Government requested the Commission to reconsider its recommendation regarding the payment of compensation.

The Commission has reviewed the matter once again on the basis of a request made by the State Government to the Commission to reconsider its recommendations. However, the Commission decided not to alter its earlier recommendation in any way and directed the State Government of Orissa to implement its earlier recommendation within an extended period of one month.<sup>36</sup>

Finally, the Orissa Government has paid an amount totalling Rs. 625,000 to 125 tribal families whose children had died of malnutrition and malaria in Phulbani district.<sup>37</sup>

### **Robin Pal case**

In this case, Robin Pal, owner of a tea-garden in Calcutta was arrested on 30 April, 1995 in connection with a case and was severely harassed along with his family members. Later, he was released by the police for want of a proper cause. Pal sought the intervention of the Commission to render justice against the harassment he and his family were forced to undergo. After a thorough inquiry the Commission found three police officials—Verghese Mishra, then Superintendent of Police, Debkumar Gangopadhyaya, Additional Superintendent of Police of South

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<sup>36</sup> Ibid., p. 40

<sup>37</sup> Human Rights News Letter, vol. 3 (1996), p. 2.

24 Parganas district and Ranjit Chakrabarty, the officer in charge of Jadavpore Thana guilty.<sup>38</sup>

The Commission then recommended to the West Bengal Government to initiate action against the three police officials. Unfortunately, the government was reluctant to take action. A reminder to this effect from the Commission also failed to elicit any response. In its further communication to the State Government, the Commission threatened to institute proceedings against the West Bengal Government before the Supreme Court for ignoring its recommendations.<sup>39</sup>

These are the few important cases where the Commission has taken cognisance of the human rights violation. In most of the cases the Commission's recommendations were complied with by concerned authorities.

### **Gujarat Communal Riot**

The Commission took *suo motu* action on the communal riots which took place in Gujarat in early 2002. The decision to take the action was based on both print and electronic media reports.<sup>40</sup> Besides, the Commission received an e-mail communication requesting the Commission to intervene. A team of the Commission visited Gujarat between 19 and 22 March, 2002 and prepared a confidential report, which was later made public.<sup>41</sup> The release of the confidential report was initially withheld to provide an opportunity to the Gujarat Government to comment on its contents, given the sensitivity of the allegations contained in it.<sup>42</sup> Unfortunately, the State Government did not bother much about

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<sup>38</sup> Hindustan Times (New Delhi), 30 May, 1996.

<sup>39</sup> Annual Report of National Human Rights Commission, 1995-96, pp. 58-9.

<sup>40</sup> National Human Rights Commission, Gujarat case, Case No. 1150/6/2001-2002, 6 March, 2002.

<sup>41</sup> Gujarat case, <http://nhrc.nic.in/GujaratOrders.htm> visited on 12 August, 2013.

<sup>42</sup> Ibid.

this report. The Commission observed that the State had failed to discharge its primary and inescapable responsibility to protect the rights to life, liberty, equality, and dignity of all of those who constitute it. The principle of *res ipsa loquitur* (the affair speaking for itself) applies in this case in assessing the degree of State responsibility in the failure to protect the Constitutional rights of the people of Gujarat. The responsibility of the State extended not only to the acts of its own agents, but also to those of non-State actors within its jurisdiction and to any action that may cause or facilitate the violation of human rights. The US government even denied a visa to Chief Minister Narendra Modi because of the Commission's report on Gujarat.<sup>43</sup>

#### **(b) Intervention in Court Proceedings**

There are a few cases where the Commission has taken the exemplary step of seeking interventions in court proceedings. In the case of *Harjit Singh*, the Commission had to intervene in pending proceedings before the High Court under Section 12 (b).<sup>44</sup>

#### **Harjit Singh case**

Harjit Singh an employee of the Punjab State Electricity Board, was alleged to have been arrested by the police on 29 April, 1992. His whereabouts were not known after his disappearance.

Amnesty International expressed concern over the slow progress in legal proceedings initiated in October, 1992 to bring to light the whereabouts of Harjit Singh. According to Amnesty's report, Harjit Singh was twice seen alive by his father in police custody after the police

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<sup>43</sup> Nilova Roy Chaudhury "US Denies Visa to Modi, India asks for Review" Hindustan Times, 18 March, 2005.

<sup>44</sup> Section 12(b) of Act, "intervene in any proceeding involving any allegation of violation of human rights pending before a High Court, with the approval of such Court".

claimed that his son had been killed. The Commission on 23 May, 1995, finally decided to intervene in pending proceedings before the High Court with the permission of the High Court.<sup>45</sup>

### **Chakma Refugees**

In this case the Commission was approached by People's Union for Civil Liberties(PUCL) regarding the alleged violation of human rights of *Chakma* refugees in September, 1994. The Commission also received a representation from the Committee for Citizenship Rights of the *Chakma* of Arunachal Pradesh (CCRCA), which also enclosed press reports indicating that an ultimatum had been issued by the All Arunachal Pradesh Students Union (AAPSU), to "foreigners" asking them to quit the State by September, 1994.<sup>46</sup>

The Commission pursued the matter with the Arunachal Pradesh Government and also with the Union Home Ministry. Meanwhile, it received another petition from the CCRCA on 28 October, 1995, alleging certain serious instances of "State-supported violations of human rights".

After a thorough inquiry conducted by the Commission in this matter, the Commission directed the State Government to maintain the *status quo*. Its directions were communicated to all concerned parties. However, expressing doubts on whether its directions would be effectively implemented, the Commission decided to approach the Supreme Court of India through a writ petition.

According to the petition, alien residents in case of violation of human rights can approach the Commission. The Commission may

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<sup>45</sup> Annual Report, n. 137, pp. 40-41

<sup>46</sup> Human Rights Newsletter, vol. 2, no. 12 (1995), p. 1.

recommend under Section 18(3) of the Act, to the concerned State for immediate interim relief to the victim or members of the family. The Commission argued that in India, aliens were entitled to invoke the protection of Article 21. Similarly, an alien cannot be subjected to such hostile treatment by a private body such as the AAPSU particularly when the actions of AAPSU are with the tacit support and/or acquiescence of the functionaries of the State of Arunachal Pradesh.<sup>47</sup>

The petition also invoked the need to ensure that Article 13 of the CP Covenant, to which India is a party, was fully complied with. It pointed out that the ratification of this Covenant by India gave rise to "legitimate expectations" in the international community.

The Supreme Court of India issued an interim order on 2 November, 1995, directing Arunachal Pradesh Government that "*Chakma* refugees situated in Arunachal Pradesh are not ousted from the State by any coercive action not in accordance with law". The Supreme Court directed in its final judgement to the State Government of Arunachal Pradesh to ensure that the life and personal liberty of each and every *Chakma* residing within the State shall be protected.<sup>48</sup>

### **Jalil Ahmed Andrabi case**

Jalil Ahmed Andrabi, an advocate was alleged to have been arrested on 8 March, 1996 between 5 to 6 p.m. from Srinagar, Jammu & Kashmir and subsequently his dead body was recovered on 27 March, 1996 from a river in Srinagar.

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<sup>47</sup> Newsletter, n. 145, p. 1.

<sup>48</sup> National Human Rights Commission v. State of Arunachal Pradesh, AIR 1996 SC 1235.

The Commission took *suo motu* cognisance of this killing of a human rights activist, Jalil Ahmed Andrabi<sup>49</sup> in Jammu and Kashmir and directed the Chief Secretary of Jammu & Kashmir for detailed report in regard to this incident.

A writ petition had already been filed in the Jammu & Kashmir High Court and the Court had set up a special investigation team for investigating the matter. The Commission decided to intervene in the pending proceeding with the approval of the High Court.

### **(c) The Court Utilizing the Commission's Investigation Mechanism**

In a case relating to the alleged mass cremation of numerous unidentified dead bodies in Punjab, the Supreme Court of India on 12 December, 1996 requested the Commission to have the matter examined in accordance with law and to determine all the issues raised before the Court.

The Commission has already issued a notice to fourteen parties including the petitioner, Paramjit Kaur.<sup>50</sup>

These are a few important cases under the above-mentioned three broad categories where the Commission has taken cognisance of human rights violation. In most of the cases, the Commission's recommendations have been complied with by concerned authorities. In various cases, the Commission recommended prosecution of public servants responsible for violation of human rights, under Section 19 (1) of the Act.

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<sup>49</sup> Human Rights Newsletter, vol. 3, no. 5, 1996, p. 1.

<sup>50</sup> Human Rights Newsletter, vol. 4, no. 1, 1997, p. 2.

## **Indian Council of Legal Aid and Advice and Others**

On 3 December, 1996 the Commission took cognisance of a letter from Chaturanan Mishra, the then Union Minister for Agriculture regarding deaths caused by starvation after the drought in the Bolangir district of Orissa. A writ petition<sup>51</sup> was filed on 23 December, 1996 by the Indian Council of Legal Aid and Advice and Others before the Supreme Court of India under Article 32 of the Constitution. The petition alleged that deaths by starvation continued to occur in certain districts of Orissa.<sup>52</sup> The Supreme Court of India on 26 July, 1997 pointed out that since the matter had been seized with the NHRC and the NHRC was expected to deliver a direction in this case, the petitioner could approach the Commission. Realising the urgency of the matter the Commission acted quickly, prepared interim measures for a two-year period, and requested the Orissa State Government to constitute a Committee to examine all aspects of the land reform question in the Kalahandi, Bolangir and Koraput (KBK) districts.<sup>53</sup> The Commission has appointed a Special Rapporteur to monitor the progress of implementation of its directions.

The Commission observed that as starvation deaths reported from some pockets of the country are invariably the consequence of mis-governance resulting from acts of omission and commission on the part of the public servant.<sup>54</sup> The Commission strongly supported the view that to be free from hunger is a fundamental right of the people of the country. Starvation, hence, constitutes a gross denial and violation of this right.

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<sup>51</sup> Writ petition (Civil) No. 42\97. Sanjay Parikh, a public-spirited lawyer on behalf of the Indian Council of Legal Aid and Advice and others, filed this petition.

<sup>52</sup> The author has personally seen the file and appeared before the Commission on a couple of occasions along with Sanjay Parikh as an advocate.

<sup>53</sup> Starvation Death in Orissa, <http://nhrc.nic.in/disparchive.asp?fno=546> and <http://nhrc.nic.in/dispar,chive.asp?fno=83> visited on 12 August, 2013.

<sup>54</sup> Ibid.

## **The Punjab Mass Cremation Order**

Two writ petitions<sup>55</sup> were filed before the Supreme Court of India containing serious allegations that the Punjab Police had carried out large-scale cremations of persons allegedly killed in what were termed as "encounters". The main thrust of the writ petitions was that these extra-judicial executions as well as hasty and secret cremations rendered the State liable for action. These petitions largely relied on a press note dated 16 January, 1995 by the Human Rights Wing of the Shiromani Akali Dal under the caption "disappeared" and "cremation ground". The note alleged that the Punjab Police had cremated a large number of human bodies after labelling them as unidentified. The Supreme Court after examining a report on the subject-matter submitted to the Court by the Central Bureau of Investigation (CBI) observed that the report indicated that 585 dead bodies were fully identified, 274 partially identified and 1238 unidentified.<sup>56</sup> The report disclosed flagrant violations of human rights on a large scale. On 12 December, 1996 the Court requested the Commission to examine the matter in accordance with law and determine all issues relating to the case. The Commission has granted in some cases compensation amounting to rupees 250,000 to the next of kin of 89 deceased persons. While granting the compensation the Commission relied on the jurisprudence developed by Indian courts pertaining to legal standards for remedial, reparatory, punitive and exemplary damages for human rights violation. The Commission observed that it is now a well accepted proposition in most of the legal systems that monetary or pecuniary compensation is an appropriate and, indeed, effective and sometimes perhaps the only suitable remedy for redress of the established

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<sup>55</sup> Writ Petition (Crl.) No. 497/95, *Paramjit Kaur v. State of Punjab and others* and Writ Petition (Crl.) No. 447/95, *Committee for Information and Initiative on Punjab v. State of Punjab*.

<sup>56</sup> Punjab Mass Cremation Order, <http://nhrc.nic.in/dispatchive.asp?fno=855> visited on 12 August, 2013.

infringement of the fundamental right of life of a citizen by public servants and the State.<sup>57</sup> The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity cannot be raised and the citizen must receive the amount of compensation.

## **II. The State Human Rights Commission**

The protection of Human Rights Act, 1993 (Act No. 10 of 1991) Came into existence on 12 September, 1993. As per the Preamble, the Act is to provide for constitution of National of Human Rights Commission , State Human Rights Commission the State for better promotion of Human Rights and for the issues connected therewith or incidental thereto.

Sec. 21 of the Act deals with constitution of the State Human Rights Commissions and sec. 36 deals with the matters no subject of the jurisdiction of the commission.

The composition of the State Human Rights Commission and its powers and functions are reflected in protection of human Rights Act, 1993. Chapter 5 of the Act deals with S.H.R.C.

### **(i) Constitution of the SHRC:**

Section 21 of the Protection of Human Right Act deals with Constitution of State Human Right Commission :

- (1) A State Government may constitute a body to be known as the ..... (name of the State) Human rights Commission to exercise the power conferred upon, and to perform the functions assigned to, a State Commission under this chapter.

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<sup>57</sup> Punjab Mass Cremation Order, supra note 44.

- (2) [The State Commission shall, with effect from such date as the State Government may by notification specify, consist of—
- (a) A. Chairman who has been a Chief Justice of a High Court;
  - (b) One Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years experience as District Judge,
  - (c) One Member to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights]<sup>58</sup>
- (3) There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall exercise such powers and discharge such functions of the State Commission as it may delegate to him.
- (4) The headquarters of the State Commission shall be at such place as the State Government may, by notification, specify.
- (5) A State Commission may inquire into violation of human rights only in respect of matters relatable to any of the entries enumerated in List II and List III in the Seventh Schedule to the Constitution:

Provided that if any such matter is already being inquired into by the Commission or any other Commission duly constituted under any law for the time being in force, the State Commission shall not inquire into the said matter:

Provided further that in relation to the Jammu and Kashmir Human Rights Commission, this sub-section shall have effect as if for the words and figures “List II and List III in the Seventh Schedule to

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<sup>58</sup> Subs by Act 43 of 2006

the Constitution”, the words and figures “List II in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir and in respect of matters in relation to which the Legislature of that has power to make laws” had been substituted.

- (6) [Two or more State governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or, as the case may be, such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment:

Provided that every appointment made under this sub-section shall be made after obtaining the recommendations of the Committee referred to in sub-section(1) of section 22 in respect of the State for which a common Chairperson or Member, or both, as the case may be, is to be appointed.]<sup>59</sup>

**(ii) Functions and power of the SHRC**

Section 12 of the Act provides that the Commission shall perform all or any of the following functions, namely:-

- (a) inquire, 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) violation of human rights or abetment thereof; or
  - (ii) negligence in the prevention of such violation, by a public servant;

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<sup>59</sup> Subs. By Act 43 of 2006

- (b) intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c)<sup>60</sup> 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 thereon 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 recommend measures 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 organisations and institutions working in the field of human rights;

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<sup>60</sup> Sub. by Act 43 of 2006

- (j) such other functions as it may consider necessary for the protection of human rights.

**Powers relating to inquiries (Sec 13)**

- (1) The Commission shall, while inquiring into complaints under this Act, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular in respect of the following matters, namely :
  - (a) summoning and enforcing the attendance of witnesses and examining them on oath;
  - (b) discovery and production of any document;
  - (c) receiving evidence on affidavits;
  - (d) requisitioning any public record or copy thereof from any court or office;
  - (e) issuing commissions for the examination of witnesses or documents;
  - (f) any other matter which may be prescribed.
- (2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 and section 177 of the Indian Penal Code.

- (3) The Commission or any other officer, not below the rank of a Gazetted Officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any document relating to the subject matter of the inquiry may be found, and may seize any such document or take extracts or copies therefrom subject to the provisions of section 100 of the Code of Criminal Procedure, 1973, in so far as it may be applicable.
- (4) The Commission shall be deemed to be a civil court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1973, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case has been forwarded to him under section 346 of the Code of Criminal Procedure, 1973.
- (5) Every proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, and the Commission shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

- (6)<sup>61</sup> Where the Commission considers it necessary or expedient so to do, it may, by order,' transfer any complaint filed or pending before it to the State Commission of the State from which the complaint arises, for disposal in accordance with the provisions of this Act;

Provided that no such complaint shall be transferred unless the same is one respecting which the State Commission has jurisdiction to entertain the same.

- (7)<sup>62</sup> Every complaint transferred under sub-section (6) shall be dealt with and disposed of by the State Commission as if it. were a complaint initially filed before it.

**(iii) Investigation Procedure**

Section 14 of the Act provides the procedure relation to investigation.

- (1) The Commission may, for the purpose of .conducting any investigation pertaining to the inquiry, utilise the services of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be.
- (2) For the purpose of investigating into any matter pertaining to the inquiry, any officer or agency whose services are utilised under subsection (1) may, subject to the direction and control of the Commission:-
- (a) summon and enforce the attendance of any person and examine him-,

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<sup>61</sup> Inserted by Act 43 of 2006

<sup>62</sup> Inserted by Act 4.3 of 2006

- (b) require the discovery and production of any document; and
  - (c) requisition any public record or copy thereof from any office.
- (3) The provisions of section 15 shall apply in relation to any statement made by a person before any officer or agency whose services are utilised under sub-section (1) as they apply in relation to any statement made by a person in the course of giving evidence before the Commission.
- (4) The officer or agency whose services are utilised under subsection (1) shall investigate into any matter pertaining to the inquiry and submit a report thereon to the Commission within such period as may be specified by the Commission in this behalf.
- (5) The Commission shall satisfy itself about the correctness of the facts stated and the conclusion, if any, arrived at in the report submitted to it under sub-section (4) and for this purpose the Commission may make such inquiry (including the examination of the person or persons who 'conducted or assisted in the investigation) as it thinks fit.

**(iv) Reports of the Commission**

Section 28 of the Act provides that

- (1) The State Commission shall submit an annual report to the State Government and may at any time submit special reports on any matter which, in its opinion, is of such urgency of importance that it should not be deferred till submission of the annual reports.

- (2) The State Government shall cause the annual and special reports of the State Commission to be laid before each House of State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House along with a memorandum of action taken or proposed to be taken on the recommendations of the State Commission and the reasons for non-acceptance of the emendations, if any.

### **III. The SC Commission**

National Commission for Scheduled Castes is committed to the full implementation of the various acts like the PCR Act, 1955 and SC and ST (POR) Act, 1989. The National Commission for Scheduled Castes will endeavor to ensure that the economic development schemes for SC population are implemented as per guidelines and every penny of SCP/SCSP is spent appropriately exclusively for the benefit of scheduled castes it also endeavors to ensure that reservations implemented at every level strictly as per government rules and regulations commission solicit cooperation of all concerned in the matter. People may report the non-implementation of any rule to the NCSC without any fear.<sup>63</sup>

The framers of the Constitution took note of the fact that certain communities in the country were suffering from extreme social, educational and economic backwardness arising out of age-old practice of untouchability and certain others on account of this primitive agricultural practices, lack of infrastructure facilities and geographical isolation, and who need special consideration for safeguarding their interests and for their accelerated socio-economic development. These communities were notified as Scheduled Castes and Scheduled Tribes as per provisions

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<sup>63</sup> [www.ncsc.nic.in](http://www.ncsc.nic.in) was visited on 10<sup>th</sup> July 2014.

contained in Clause 1 of Articles 341 and 342 of the Constitution respectively.

With a view to provide safeguards against the exploitation of SCs & STs and to promote and protect their social, educational, economic and cultural interests, special provisions were made in the Constitution. Due to their social disability and economic backwardness, they were grossly handicapped in getting reasonable share in elected offices, Government jobs and educational institutions and, therefore, it was considered necessary to follow a policy of reservations in their favour to ensure their equitable participation in governance. For effective implementation of various safeguards provided in the Constitution for the SCs & STs and various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution. The Special Officer who was designated as Commissioner for SCs & STs was assigned the duty to investigate all matters relating to the safeguards for SCs and STs in various statutes and to report to the President upon the working of these safeguards. In order to facilitate effective functioning of the office of the Commissioner for SCs & STs 17 regional offices of the Commissioner were set up in different parts of the country.

On persistent demand of the Members of Parliament that the Office of the Commissioner for SCs & STs alone was not enough to monitor the implementation of Constitutional safeguards, a proposal was moved for amendment of Article 338 of the Constitution (46th Amendment) for replacing the arrangement of one Member system with a Multi-Member system while the amendment to Article 338 was still under consideration, the Government decided to set up a Multi-Member Commission through an administrative decision vide Ministry of Home Affairs' Resolution No.13013/9/77-SCT(1) dated 21.7.1978. The first Commission for SCs &

STs was, therefore, set up in August, 1978 with Shri Bhola Paswan Shastri as Chairman and other four Members. The field offices of the erstwhile Commissioner for Scheduled Castes and Scheduled Tribes which were transferred under the control of DG backward classes welfare in 1965 were brought back under the control of this Commission. The functions of the Commission for SCs & STs broadly corresponded with those of the Commissioner for SCs & STs.

The functions of the Multi-Member Commission set-up in 1978 were modified vide Ministry of Welfare's Resolution No. BC-13015/12/86-SCD VI dated 1-9-1987 and the Commission for SCs & STs was renamed as the National Commission for Scheduled Castes and Scheduled Tribes. It was set up as a National Level Advisory Body to advise the Government on broad policy issues and levels of development of Scheduled Castes and Scheduled Tribes.

The statutory National Commission for Scheduled Castes and Scheduled Tribes (hereinafter referred to as the Commission) came into being consequent upon passing of the Constitution (Sixty fifth Amendment) Bill, 1990 which was notified on 8-6-1990 (Annexure-I) and the Rules there under were notified on 3-11-1990. The first Commission under the Constitution (65th Amendment) Act was constituted on 12-3-1992 replacing the Commissioner for Scheduled Castes and Scheduled Tribes and the Commission set up under the Ministry of Welfare's Resolution of 1987. The first Commission consisted of Shri Ram Dhan as the Chairman, Shri Bandi Oraon as the Vice-Chairman and Shri B. Sammaiah, Dr. Sarojini Mahishi, Choudhary Hari Singh, Shri N. Brahma and Shri Jina Bhai Darjee as Members.

Consequent upon the Constitution (Eighty-Ninth Amendment) Act, 2003 coming into force on 19-2-2004 vide Notification of that date the erstwhile National Commission for Scheduled Castes & Scheduled Tribes has been replaced by (1) National Commission for Scheduled Castes, and (2) National Commission for Scheduled Tribes. The Rules of the National Commission for Scheduled Castes were notified on 20th February, 2004 by the Ministry of Social Justice & Empowerment.

The first National Commission for Scheduled Castes was constituted with S/Shri Suraj Bhan, Chairperson, Fakirbhai Vaghela, Vice-Chairperson, Phool Chand Verma, Member, V. Devendra, Member and Smt. Surekha Lambture as Members. Due to sudden and unexpected demise of Dr. Suraj Bhan, Chairman on 6.8.2006, the duties and function of the Chairman were discharged by Shri Fakirbhai Vaghela, Vice-Chairman of the Commission.

The second National Commission for Scheduled Castes in series was constituted on 25.05.2007 vide Ministry of Social Justice & Empowerment's letter No.17016/21/2006-SCD-VI with Dr. Buta Singh as the Chairman, Prof. Narendra M. Kamble, the Vice-Chairman and Smt. Satya Bahin, Shri Mrutyunjay Nayak, and Shri Mahendra Boddh respectively as Members.

**(i) Constitution of the SC Commission**

- (1) The Members shall be appointed from amongst persons of ability, integrity and standing who have had a record of selfless service to the cause of justice for the Scheduled Castes.
- (2) Subject to the provisions of sub rule (1)-

- (a) The Chairperson shall be appointed from amongst eminent socio-political workers belonging to the Scheduled Castes, who inspire confidence amongst the Scheduled Castes by their very personality and record of selfless service.
  - (b) The Vice-Chairperson and all other Members out of whom at least two shall be appointed from amongst persons belonging to the Scheduled Castes.
  - (c) At least one other Member shall be appointed from amongst women.
- (3) The Chairperson, the Vice-Chairperson and the other Members shall hold office for a term of three years from the date on which he/she assumes such office.[Rule-5(1)]
  - (4) The Chairperson, the Vice-Chairperson and the other Members shall not be eligible for appointment for more than two terms. [Rule-5(2)]
  - (5) The Chairperson shall have the rank of a Cabinet Minister and the Vice-Chairperson that of Minister of State and other Members shall have the rank of a Secretary to the Government of India unless otherwise specified.[Rule-6(1)]
  - (6) The Chairperson, the Vice-Chairperson and other Members shall be entitled to such salaries and allowances as admissible to a Secretary to the Government of India.[Rule-6(2)].

Provided that the Chairperson shall be entitled to a rent free accommodation.

**(ii) Functions and Duties of the Commission**

The functions, duties and power of the Commission have been laid down in clauses (5), (8) and (9) of the Article 338 of the Constitution.

Clause (5): It shall be the duty of the Commission: -

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State;
- (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes; and
- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the

Scheduled Castes as the President may, subject to the provisions of any law made by Parliament, by rule specify.

Clause (8) - The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

- (a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) Requiring the discovery and production of any documents;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses and documents;
- (f) Any other matter which the President may by rule, determine;

Clause (9)- The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.

**(iii) Procedure for Inquiry**

**(a) Inquiry into specific complaints**

The Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of Scheduled

Castes. In order to enable the Commission to perform this function effectively and efficiently, the Commission would like the members of Scheduled Castes to know that it will be helpful to inquire into their grievances if they substantiate their complaints with supporting documents and quote the relevant provisions of the Act or Rules directions which have been violated.

The following aspect may be kept in mind while filing complaints before the Commission.

- (a) The complaint should be directly addressed to the Chairman/Vice-Chairman/Secretary, National Commission for Scheduled Castes, New Delhi or the heads of its State Offices.
- (b) The complaints should disclose his full identity and give his full address and should sign the representation.
- (c) Complaints should be legibly written or typed and, where necessary, supported by authenticated documents.
- (d) No action will be taken on matters, which are subjudice. Hence subjudice matter need not be referred to the Commission as complaint(s).
- (e) Cases pending in courts or cases in which a court has already given its final verdict may not be taken up afresh with the Commission.
- (f) If Commission, prima facie, feels that there is instance of allegation-
  - Thorough enquiry may be conducted by the Commission through its Investigation Officer & report of the said inquiry

may be placed before the Court before final decision taken by the Court.

- Courts are not enquiry agencies. They depend upon IOs i.e. Police, Vigilance, CBI officers.
- Commission may also act as a supporting agency of the prosecution in the case initially investigated by NCSC.

(g) The cases of transfer/posting in the Govt. service of the members of Scheduled Castes should not be considered in the Commission unless the specific instance of violation of Rules instructions leading to discrimination against the complainant come to the notice of NCSC.

**(b) Inquiry into cases of atrocities**

Whenever information is received in the Commission about any incident of atrocity against a person belonging to Scheduled Castes, the Commission would immediately get in touch with the law enforcing and administrative machinery of the State and the district to ascertain the details of incident and the action taken by the district administration. If after detailed inquiry/investigation; the Commission finds substance in the allegation/complaint regarding atrocity, the Commission may file an FIR against the accused with the concerned law-enforcing agency of the State/District.

The Commission ensures the following while by monitoring and issuing instructions to the concerned authorities.

- (i) Whether the scene of occurrence of the crime has been visited immediately by Collector and Supdt. of Police of the district on receipt of information.
- (ii) Whether proper FIR is registered in local Police Station.
- (iii) Whether names of all the persons involved/cited by the complainant has been included in the FIR.
- (iv) Whether investigation has been taken up by a Senior Police Officer as per provisions of SCs & STs (POA) Act, 1989.
- (v) Whether culprits has been apprehended and booked without loss of time.
- (vi) Whether proper charge sheet is filed mentioning the relevant sections of IPC together with the PCR Act, 1955 and SCs & STs (POA) Act, 1989 in Court.
- (vii) Whether the cases are tried by the Special Courts.
- (viii) Whether special Public Prosecutors are appointed to handle these cases.
- (ix) Whether Police assists the courts in bringing forward witnesses and see that the culprits are suitably punished by the courts.

The Commission will also monitor that

- (i) the victims are provided with suitable medical assistance and on time;

- (ii) adequate protection is arranged for the victims of such incidents by providing police protection by stationing a police party, by patrolling, etc;
- (iii) to see that proper compensation is paid to the victims as per provisions of law.

The Commission will, wherever possible depending upon the gravity and circumstances of the case, visit the place of incident to oversee the arrangements and to console and infuse confidence among the victims.

The Commission has laid down detailed procedure for conducting such inquiries and monitoring at all levels. Such inquiries can be conducted by the Members of the Commission or Teams of Investigators from Headquarters or State office of the Commission.

When any offence as is described as an atrocity in the relevant acts for the time being in force, is committed in the view or presence of the Commission or has been found to have been taken cognizance by the Commission, in pursuance of the enquiry/investigation conducted by it in the discharge of its functions, the Commission may, after recording the facts constituting the offence, forward the case to a Magistrate having jurisdiction to try the same.

**(iv) Powers of the Commission**

While investigating any matter referred to in sub-clause (a) or inquiring into specific complaints under sub-clause (b) of the clause (5) of Article 338 of the Constitution, the Commission shall have the powers

of a Civil Court trying a suit and in particular in respect of the following matters:

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning of any public record or copy thereof from any court of office;
- (e) issuing commissions for the examination of witnesses the documents;
- (f) any other matter which the President may, by rule, determine.

**(v) Report of the Commission**

Clause 5(d) of Article 338 provides “to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards” and Clause 5(e) provides “to make in such reports, recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes.”

As per provision of these Clauses it is the duty of the Commission to present annually a report upon the working of Constitutional safeguards and measures taken by the Union and the States for the protection and welfare of the Scheduled Castes. In this series the

erstwhile National Commission for Scheduled Castes and Scheduled Tribes has presented seven Annual Reports and four Special Reports during the period from 12th March, 1992 to 19th February, 2004 containing a number of recommendations.

Clause 6 of Article 338 provides, “The President shall cause all such reports to be laid before each House of Parliament along with a Memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of such recommendations.

Clause 7 of Article 338 provides, “Where any such report or any part thereof relates to any matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a Memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for non-acceptance, if any, of any of such recommendations.

#### **IV. The ST Commission**

The framers of the Constitution took note of the fact that certain communities in the country were suffering from extreme social, educational and economic backwardness arising out of age-old practice of untouchability and certain others on account of the primitive agricultural practices, lack of infrastructure facilities and geographical isolation, and who need special consideration for safeguarding their interests and for their accelerated socio-economic development. These communities were notified as Scheduled Castes and Scheduled Tribes as per provisions

contained in Clause 1 of Articles 341 and 342 of the Constitution respectively.<sup>64</sup>

With a view to provide safeguards against the exploitation of SCs & STs and to promote and protect their social, educational, economic and cultural interests, special provisions were made in the Constitution. Due to their social disability and economic backwardness, they were grossly handicapped in getting reasonable share in elected offices, government jobs and educational institutions and, therefore, it was considered necessary to follow a policy of reservations in their favour to ensure their equitable participation in governance. For effective implementation of various safeguards provided in the Constitution for the SCs & STs and various other protective legislations, the Constitution provided for appointment of a Special Officer under Article 338 of the Constitution.

The first National Commission for Scheduled Tribes (NCST) was constituted in March, 2004 and Shri Kunwar Singh, was appointed first Chairperson of the Commission.

**(i) Constitution of the ST Commission**

The conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members of the National Commission for Scheduled Tribes are governed by the National Commission for Scheduled Tribes. Chairperson, Vice-Chairperson and Members (Conditions of Service and Tenure) Rules notified by the Ministry of Tribal Affairs on 20 February 2004. These Rules, inter alia, provide that :

- (a) The Chairperson shall be appointed from amongst eminent social-political workers belonging to the Scheduled Tribes, who inspire

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<sup>64</sup> www.ncst.nic.in was visited on 10<sup>th</sup> July, 2014.

confidence amongst the Scheduled Tribes by their very personality and record of selfless service;

- (b) The Vice-Chairperson and all other Members out of whom at least two shall be appointed from amongst persons belonging to the Scheduled Tribes;
- (c) At least one other Member shall be appointed from amongst women.
- (d) The Chairperson, the Vice-Chairperson and the other Members shall hold office for a term of three years from the date on which he/ she assumes such office.[Rule-4(1)]
- (e) The Chairperson, the Vice-Chairperson and the other Members shall not be eligible for appointment for more than two terms. [Rule-4(2)]
- (f) The Chairperson shall have the rank of a Cabinet Minister and the Vice-Chairperson that of Minister of State and other Members shall have the rank of a Secretary to the Government of India unless otherwise specified.[Rule-5(1)]
- (g) The Chairperson, the Vice-Chairperson and other Members shall be entitled to such salaries and allowances as admissible to a Secretary to the Government of India.[Rule-5(2)].

Provided that the Chairperson shall be entitled to a rent free accommodation.

A copy of the National Commission for Scheduled Tribes Chairperson, Vice-Chairperson and Members (Conditions of Service and

Tenure) Rules notified by the Ministry of Tribal Affairs on 20 February 2004.

**(ii) Functions and Duties of the Commission**

The functions and duties of the National Commission for Scheduled Tribes have been laid down in Clause (5) of the Article 338A of the Constitution. Clause (5) states that it shall be the duty of the Commission:

- (a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;
- (b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;
- (c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;
- (d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;
- (e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

- (f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule, specify.

The Commission has been assigned the following additional functions vide the Ministry of Tribal Affairs' Notification dated 23 August, 2005 in relation to the protection welfare and development and advancement of the Scheduled Tribes:-

- (a) Measures that need to be taken over conferring ownership rights in respect of minor forest produce to STs living in forest areas.
- (b) Measures to be taken to safeguard rights of the tribal communities over mineral resources, water resources etc. as laid down by law.
- (c) Measures to be taken for the development of tribal to plug loopholes and to work more viable livelihood strategies.
- (d) Measures to be taken to improve the efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.
- (e) Measures to be taken to prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already been taken place.
- (f) Measures to be taken to elicit maximum cooperation and involvement of tribal communities for protecting forests and undertaking social afforestation.

- (g) Measures to be taken to ensure full implementation of the provision of Panchayat (Extension to Scheduled Areas) Act, 1996
- (h) Measures to be taken to reduce and ultimately eliminate the practice of shifting cultivation by tribal that lead to their continuous disempowerment and degradation of land and the environment.

**(iii) Powers of the Commission**

Clause (8) of Article 338A provides that the Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of Clause (5) have all the powers of a civil court trying a suit and in particular in respect of the matters, namely:-(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath; (b) requiring the discovery and production of any documents;(c) receiving evidence on affidavits;(d) requisitioning any public record or copy thereof from any court or office; (e) issuing commissions for the examination of witnesses and documents; (f) any other matter which the President may by rule, determine.

**(iv) Procedure for Inquiry**

The Commission is required to inquire into specific complaints with respect to the deprivation of rights and safeguards of Scheduled Tribes. In order to enable the Commission to perform this function within manageable limits, the Commission would like to appeal to members of ST that before submitting any specific complaint to the Commission for redress of their grievances they should clearly state if and how there has

been a violation of their rights and safeguards. The Commission would not like to be burdened with flimsy or irrelevant complaints. A large number of representations are regularly received from ST employees working in Government Departments, public sector undertakings and autonomous bodies. The Commission would like them to know that it will be in a position to inquire into their service grievances only if there has been a violation of any provision of the Acts governing reservation in services and posts for Scheduled Tribes (wherever there are such Acts in position) or the orders contained in the brochures relating to reservation matters issued by the Department of Personnel & Training, Department of Public Enterprises in relation to the public sector undertakings, the Banking Division of the Department of Economic Affairs (Ministry of Finance) with reference to the financial institutions, Ministry of Railways.

**(v) Report of the Commission**

In terms of Clause (5) (d) of Article 338A of the Constitution, the Commission makes recommendations to the Government on a variety of issues relating to Scheduled Tribes ranging from reservation in Govt. posts and services to development matters through its reports which are submitted to the Hon'ble President of India annually or at such other times as the Commission may deem fit. The President of India, in terms of Clause (6) of Article 338A causes the reports to be laid before each House of Parliament with a Memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for non-acceptance, if any, of such recommendations contained in the report. On similar lines where any such report or any part thereof relates to the State Govt., the Governor of the State, in terms of Clause (7) of Article 338A, causes it to be laid before the Legislature of

the State along with a Memorandum explaining the action taken or proposed to be taken on these recommendations relating to the State and the reasons for non-acceptance, if any, on any of such recommendations. The first report of the Commission covering two years period, 2004-05 and 2005-06 was submitted to the President of India by the Commission on 8 August, 2006.

## **V. The National Commission for Women**

The National Commission for women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt. of India) to review the Constitutional and legal safeguards for women, recommend remedial legislative measures, facilitate redressal of grievances and advice the Government on all policy matters affecting women.

### **(i) Constitution of the NCW**

Section 3 of the NCW Act provides that :

- (1) The Central government shall constitute a body to be known as the National Commission for Women to exercise the powers conferred on, and to perform the functions, assigned to it under this Act.
- (2) The Commission shall consist of—
  - (a) A Chairperson, committed to the cause of women, to be nominated by the Central Government;
  - (b) Five Members to be nominated by the Central Government from amongst persons of ability, integrity and standing who have had experience in law or legislation, trade unionism, management of an industry or organisation committed to

increasing the employment potential of women, women's voluntary organisations (including women activists), administration, economic development, health, education or social welfare :

Provided that at least one Members each shall be from amongst persons belonging to the Scheduled Castes and Scheduled Tribes, respectively;

- (c) A Member-Secretary to be nominated by the Central Government, who shall be –
  - (i) An expert in the field of management, organizational structure or sociological movement, or
  - (ii) An officer who is member of civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience.

**(ii) Functions of the Commission :**

Section 10 of the Act deals with function of the Commission.

- (1) The Commission shall perform all or any of the following functions, namely :–
  - (a) investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws;
  - (b) Present to the Central Government, annually and at such other time as the Commission may deem fit, reports upon the working of those safeguards;

- (c) make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State;
- (d) review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;
- (e) take up the cases of violation of the provisions or the Constitution and of other laws relating to women with the appropriate authorities;
- (f) look into complaints and take *sue motu* notice of matters relating to :
  - (i) deprivation of women's rights;
  - (ii) non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
  - (iii) Non-compliance of policy decisions, guidelines or instructions aimed mitigating hardships and ensuring welfare and providing relief to women; and take up the issues arising out of such matters with appropriate authorities.
- (g) Call for special studies or investigations into specific problems or situations arising out of discrimination and

atrocities against women and identify the constraints so as to recommend strategies for their removal;

- (h) undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity;
- (i) participate and advice on the planning process of socio-economic development of women;
- (j) evaluate the progress of the development of women under the Union and any State;
- (k) inspect or cause to be inspected a jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary;
- (l) fund litigation involving issues affecting a large body of women;
- (m) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;

- (m) make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil;
  - (n) any other matter which may be referred to it by the Central Government.
- (2) The Central Government shall cause all the reports referred to in clause (b) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.
- (3) Where any such report or any part thereof relates to any matter with which any State Government is concerned, the Commission shall forward a copy of such report or part of such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any such recommendations.
- (4) The commission shall, while investigating any matters referred to in clause (a) or sub-clause (i) or clause (f) of sub-section (1) have all the powers of a civil court trying a suit and, in particular, in respect of the following matters, namely:
  - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

- (b) requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof, from court or office;
- (e) issuing commissions for the examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

### **(iii) Report of the Commission**

Section 13 provides that the Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual reports, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government. Accordingly Section 14, the Central Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the Central Government, and the reasons for the non-acceptance, if any, of any of each recommendations and the audit report to be laid as soon as may be after the reports are received, before each House of Parliament.

## **VI. The National Commission for Minorities**

The Union Government set up the National Commission for Minorities (NCM) under the National commission for Minorities Act, 1992 (Act No. 19 of 1992)<sup>65</sup>. Five religious communities, viz. Muslims, Christians, sikhas, Buddhists and Zoroastrians (Pursis) have been notified

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<sup>65</sup> Received the assent of the President on 17.5.1992. Published in Gazette of India, (Extra), Part II, Section 1, dated 17.5.1992.

as minority communities by the union government. Recently Union Government declared on 27<sup>th</sup> Jan 2014, Jains have also been notified as minority community (notification so No. 816(E) dated 23.10.1993). The main objects of the commission are to safeguard and protect the interests of minorities provided in the constitution and laws enacted by parliament and the state legislature.

**(i) Constitution of the NCM**

Section 3 of the Act provides about the Constitution of NCM.

- (1) The Central Government shall constitute a body to be known as the National Commission for Minorities to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.
- (2) The Commission shall consist of a <sup>66</sup>[Chairperson, a Vice-Chairperson and five Members] to be nominated by the Central Government from amongst persons of eminence, ability and integrity.

Provided that, five Members including the Chairpersons shall be from amongst the minority communities.

**(ii) Functions of the Commission**

Section 9 of the Act provides that :

- (1) The Commission shall perform all or any of the following functions, namely :-

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<sup>66</sup> Subs. By Act 41 of 1995, for the words “Chairperson and six Members”.

- (a) evaluate the progress of the development of minorities under the Union and States;
- (b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislature;
- (c) make recommendations for the effective implementation of safeguards for the protection of the interests of minorities by the Central Government or the State Governments;
- (d) look into specific complaints regarding deprivation of rights and safeguards of the minorities and take up such matters with the appropriate authorities;
- (e) cause studies to be undertaken into problems arising out of any discrimination against minorities and recommend measures for their removal;
- (f) conduct studies, research and analysis of the issues relating to socio-economic and educational development of minorities;
- (g) suggest appropriate measures in respect of any minority to be undertaken by the Central Government or the State Governments;
- (h) make periodical or special reports to the Central Government on any matter pertaining to minorities and in particular difficulties confronted by them; and

- (i) any other matter which may be referred to it by the Central Government.
- (2) the Central Government shall cause the recommendations referred to in clause (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.
- (3) Where any recommendation referred to in clause (c) of sub-section (1) or any part thereof with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government, who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance if, any, of any of such recommendation or part.
- (4) The Commission shall, while performing any of the functions mentioned in sub-clauses (a), (b) and (d) of sub-section (1), have all the powers of a civil Court trying a suit and in particular, in respect of the following matters, namely :—
  - (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
  - (b) requiring the discovery and production of any document;
  - (c) receiving evidence on affidavits;

- (d) requisitioning any public record or copy thereof from any court or office; shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

### **(iii) Reports of Commission**

Accordingly Section 12 of the Act the Commission shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government. Section 13 of the Act provides that the Central Government shall cause the annual report together with a memorandum of action taken on the recommendations contained therein, in so far as they relate to the Central Government, and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report to be laid as soon as may be after the reports are received, before each House of Parliament.

## **VII. The Judiciary**

Judiciary in every country has an obligation and a Constitutional role to protect Human Rights of citizens. As per the mandate of the Constitution of India, this function is assigned to the superior judiciary namely the Supreme Court of India and High courts. The Supreme Court of India is perhaps one of the most active courts when it comes into the matter of protection of Human Rights. It has great reputation of independence and credibility. The preamble of the Constitution of India encapsulates the objectives of the Constitution-makers to build a new Socio-Economic order where there will be Social, Economic and Political Justice for everyone and equality of status and opportunity for all. This basic objective of the Constitution mandates every organ of the state, the

executive, the legislature and the judiciary working harmoniously to strive to realize the objectives concretized in the Fundamental Rights and Directive Principles of State Policy.

The judiciary must therefore adopt a creative and purposive approach in the interpretation of Fundamental Rights and Directive Principles of State Policy embodied in the Constitution with a view to advancing Human Rights jurisprudence. The promotion and protection of Human Rights is depends upon the strong and independent judiciary. The main study here would be given wide coverage to the functional aspect of the judiciary and see how far the Apex judiciary in India has achieved success in discharging the heavy responsibility of safeguarding Human Rights in the light of our Constitutional mandate. The major contributions of the judiciary to the Human Rights jurisprudence have been two fold: (1) the substantive expansion of the concept of Human Rights under Article 21 of the Constitution, and (2) the procedural innovation of Public Interest Litigation.

### **Writ Jurisdiction of the Supreme Court and the High Courts**

The most significant of the Human Rights is the exclusive right to Constitutional remedies under Articles 32 and 226 of the Constitution of India. Those persons whose rights have been violated have right to directly approach the High Courts and the Supreme Court for judicial rectification, redressal of grievances and enforcement of Fundamental Rights. In such a case the courts are empowered to issue appropriate directions, orders or writs including writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto, and Certiorari. By virtue of Article 32, the Supreme Court of India has expanded the ambit of Judicial Review to include review of all those state measures, which either violate

the Fundamental Rights or violative of the Basic Structure of the Constitution. The power of Judicial Review exercised by the Supreme Court is intended to keep every organ of the state within its limits laid down by the Constitution and the laws. It is in exercise of the power of Judicial Review that, the Supreme Court has developed the strategy of Public Interest Litigation.

The right to move to the Supreme Court to enforce Fundamental Rights is itself a Fundamental Right under Article 32 of the Constitution of India. This remedial Fundamental Right has been described as “the Cornerstone of the Democratic Edifice” as the protector and guarantor of the Fundamentals Rights. It has been described as an integral part of the Basic Structure of the Constitution. Whenever, the legislative or the executive decision result in a breach of Fundamental Right, the jurisdiction of the Supreme Court can be invoked. Hence the validity of a law can be challenged under Article 32 if it involves a question of enforcement of any Fundamental Rights.

The Right to Constitutional remedy under Article 32 can be suspended as provided under Articles 32(4), 358 and 359 during the period of promulgation emergency. Accordingly, in case of violation of Fundamental Rights, the petitioner under Article 32 for enforcement of such right can not be moved during the period of emergency. However, as soon as the order ceases to be operative, the infringement of rights made either by the legislative enactment or by executive action can be challenged by a citizen in a court of law and the same may have to be tried on merits, on the basis that the rights alleged to have been infringed were in operation even during the pendency of the presidential proclamation of emergency. If, at the expiration of the presidential order, the parliament passes any legislation to protect the executive action taken

during the pendency of the presidential order and afford indemnity to the execution in that behalf, the validity and effect of such legislation may have to be carefully scrutinized.

Under Article 226 of the Constitution of India, the High Courts have concurrent jurisdiction with the Supreme Court in the matter granting relief in cases of violation of the Fundamental Rights, though the High Courts exercise jurisdiction in case of any other rights also. The Supreme Court observed that where the High Court dismissed a writ petition under Article 226 after hearing the matter on merits, a subsequent petition in the Supreme Court under Article 32 on the same facts and for the same relief filed by the same parties will be barred by the rule of *Res-judicata*. The binding character of the judgment of the court of competent jurisdiction is in essence, a part of the rule of law on which, the administration of justice is founded.<sup>67</sup> Thus the judgment of the High Court under Article 226 passed after hearing the parties on merits must bind the parties till set aside in the appeal as provided by the Constitution and can not be permitted to be avoided by a petition under Article 32.

Article 226 contemplates that notwithstanding anything in Article 32, every High Court shall have power, throughout the territorial limits in relation to which it exercises jurisdiction to issue to any person or authority including the appropriate cases, any government, within those territories, direction, orders or writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari or any of them for the enforcement of Fundamental Rights conferred by part-III and for “any other purpose”. Hence, the jurisdiction of a High Court is not limited to the protection of the Fundamental Rights but also of the other legal rights as is clear from the words “any other purpose”. The concurrent

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<sup>67</sup> Daryao v. State of U.P., AIR 1961 SC 1457

jurisdiction conferred on High Courts under Article 226 does not imply that a person who alleges the violation of Fundamental Rights must first approach the High Court, and he can approach the Supreme Court directly. This was held in the very first case **Ramesh Thapper v. State of Madras**.<sup>68</sup>

But in **P.N. Kumar v. Municipal Corporation of Delhi**,<sup>69</sup> the Supreme Court expressed the view that a citizen should first go to the High Court and if not satisfied, he should approach the Supreme Court. Innumerable instances of Human Rights violation were brought before the Supreme Court as well as the High Courts. Supreme Court as the Apex Court devised new tools and innovative methods to give effective redressal.

### **Rule of Locus Standi vis-à-vis Public Interest Litigation**

The traditional rule is that the right to move the Supreme Court is only available to those whose Fundamental Rights are infringed. A person who is not interested in the subject matter of the order has no Locus Standi to invoke the jurisdiction of the court. But the Supreme Court has now considerably liberalized the above rule of Locus Standi. The court now permits the “public spirited persons to file a writ petition for the enforcement of Constitutional and statutory rights of any other person or a class, if that person or a class is unable to invoke the jurisdiction of the High Court due to poverty or any social and economic disability. The widening of the traditional rule of Locus Standi and the invention of Public Interest Litigation by the Supreme Court was a significant phase in the enforcement of Human Rights.

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<sup>68</sup> AIR 1950 SC 124

<sup>69</sup> AIR 1989 SC 1285

In **S.P. Gupta v. Union of India and others**,<sup>70</sup> the seven member bench of the Supreme Court held that any member of the public having “sufficient interest” can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of their poverty or other disabilities. A person need not come to the court personally or through a lawyer. He can simply write a letter directly to the court complaining his sufferings. Speaking for the majority Bhagwathi, J. said that any member of the public can approach the court for redressal where, a specific legal injury has been caused to a determinate class or group of persons when such a class or person are unable to come to the court because of poverty, disability or a socially or economically disadvantageous position. In the instant case, the court upheld the right of lawyers to be heard on matters affecting the judiciary. By this judgement Public Interest Litigation became a potent weapon for the enforcement of “public duties” where executed inaction or misdeed resulted in public inquiry.

While expanding the scope of the “Locus Standi”, Bhagwathi, J. expressed a note of caution and observed “but we must be careful to see that the member of the public, who approaches the court in case of this kind, is acting bonafide and not for personal gain or private profit or political motivation or other consideration. The court must not allow its process to be abused by politicians and other”. Hence the court was aware that this liberal rule of Locus Standi might be misused by vested interests.

As a result of this broad view of Locus Standi permitting Public Interest Litigation or Social Action Litigation, the Supreme Court of India has considerably widened the scope of Article 32 of the Constitution. The Supreme Court has jurisdiction to give an appropriate remedy to the

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<sup>70</sup> AIR 1982 SC 149

aggrieved persons in various situations. Protection of pavement and slum dwellers of Bombay, improvement of conditions in jails, payment of Minimum Wages, protection against Atrocities on Women, Bihar blinding case, Flesh trade in protective home of Agra, Abolition of Bonded Labourers, Protection of Environment and Ecology are the instances where the court has issued appropriate writs, orders and direction on the basis of Public Interest Litigation.

The strategy of Public Interest Litigation has been evolved by this court with a view to bringing justice within the easy reach of the poor and disadvantaged sections of the community.<sup>71</sup> In **Peoples Union for Democratic Rights vs. Union of India**,<sup>72</sup> the Supreme Court held that Public Interest Litigation is brought before the court not for purpose of enforcing the right of one individual against another as happened in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of Constitutional or legal rights of large number of people who are poor, ignorant or in a socially or economically disadvantageous position should not go unnoticed and unredressed.

In **Bandhu Mukti Morcha v. Union of India**,<sup>73</sup> the Apex Court held that the power of the Supreme Court under Article 32 includes the power to appoint Commission for making enquiry into facts relating to the violation of Fundamental Rights. The Apex Court further held that Public Interest Litigation through a letter should be permitted, but expressed the view that, in entertaining such petitions, the court must be cautious so that, it might not be abused. The court suggested that all such letters must be addressed to the entire court and not a particular judge and

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<sup>71</sup> Bihar Legal Support Society v. Chief Justice of India (1986) 4 SCC 767

<sup>72</sup> AIR 1982 SC 1473

<sup>73</sup> AIR 1984 SC 803

secondly it should be entertained only after proper verification of materials supplied by the petitioner. This is known as epistolary jurisdiction.

The advent of Public Interest Litigation (here in after referred to as PIL) is one of the key components of the approach of “Judicial Activism” that is attributed to the higher judiciary in India. The verdict of Bhagwati, J. in **M.C. Mehta v. Union of India**,<sup>74</sup> opened the doors of the Apex Court of India for the oppressed, the exploited and the down – trodden in the villages of India or in urban slums. The poor in India can seek enforcement of their Fundamental Rights from the Supreme Court by writing a letter to any judge of the court even without the support of an Affidavit. The court has brought legal aid to the door steps of millions of Indians which the executive has not been able to do despite that, a lot of money is being spent on new legal aid schemes operating at the central and state level.

A study of the notable cases of the Supreme Court speak of the fact that the Indian judiciary has adopted strong sentiments in favour of Public Interest Litigation and the functioning of judiciary reveals that it has exercised its powers in the most creative manner and devised new strategies to ensure the protection of Human Rights to the people. The Supreme Court of India has used the strategy of Public Interest Litigations as an aid to enforce the rights of prisoners, workers, pensioners, victims of environmental pollution and others. The Public Interest Litigation plays an important role in ensuring the Principle of Rule of Law by making the administration is accountable to the people. The Supreme Court of India in **Narmada Bachao Andolan v. Union of**

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<sup>74</sup> AIR 1987 SC 1087

**India,**<sup>75</sup> held that Public Interest Litigation was an invention essentially to safeguard and protect the Human Rights of those people who were unable to protect themselves.

In the recent past Public Interest Litigation has acquired a new dimension. Apart from securing several non-justifiable socio-economic rights as guaranteed under the Fundamentals Rights, the Supreme Court has frequently resorted to a novel feature in the field of Human Rights jurisprudence such as compensatory jurisprudence, judicial law making with a view to secure justice to the down-trodden and also to the oppressed people. Public Interest Litigation is a weapon which has to be used with care and caution. The judiciary has to be extremely careful to see that whether it contains public interest or private vested interest. It is to be used as an effective weapon in the armoury of law for delivering social justice to citizens. The strategy of Public Interest Litigation should not be used for suspicious products of mischief. It should be aimed at the redressal of genuine public wrong or public injury and not publicity-oriented or founded on personal vendetta.<sup>76</sup>

There have been in recent times, increasingly instances of abuse of Public Interest Litigations. Therefore there is a need to re-emphasize the parameters within which Public Interest Litigation can be resorted to by a petitioner and entertained by the court. It was essentially meant to protect basic Human Rights of weak and disadvantaged. Public Interest Litigation has not been moved under disguise with some ulterior motive or some purpose. The courts are now imposing moderate to heavy costs in cases of misuse of Public Interest Litigation which should be an eye opener for non-serious Public Interest Litigation mover.

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<sup>75</sup> (2000) 4 SCJ 261

<sup>76</sup> Ashok Kumar Pandey v. State of West Bengal, (2004) 3 SCC 349

The greatest contribution of Public Interest Litigation has been to enhance the accountability of the governments towards the Human Rights of the poor. Public Interest Litigation interrogates power and makes the courts as peoples court. The Supreme Court of India in a number of important decisions has significantly expanded the scope and frontier of Human Rights. Public interest matters today focus more and more on the interests of the Indian middle classes rather than on the oppressed classes. PIL seeking order to ban Quran<sup>77</sup> transmission of T.V. Serials,<sup>78</sup> implementation of Consumer Protection Law<sup>79</sup> removal of corrupt ministers,<sup>80</sup> invalidation of irregular allotment of petrol pumps<sup>81</sup> and government accommodation<sup>82</sup> prosecution of politicians and bureaucrats for accepting bribes and Kickbacks through Hawala transactions,<sup>83</sup> better service conditions of the members of lower judiciary<sup>84</sup> or quashing selection of university teachers<sup>85</sup> are some blatant examples espousing middle class interests. Some initial successes of PIL, however cannot certify that it shall always remain an effective instrument for protection of Human Rights. The future of PIL will depend upon who uses it and for whom.

### **Prisoners and the Human Rights**

The Supreme Court of India in the recent past has been very vigilant against encroachments upon the Human Rights of the prisoners. In this area an attempt is made to explain the some of the provisions of the rights of prisoners under the International and National arenas and

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<sup>77</sup> Chandanmal Chopra v. State of West Bengal, AIR 1986 Cal 104

<sup>78</sup> Oddessey Lok Vidyayana Sanghatan v. Union of India, (1988) ISCC 168

<sup>79</sup> Common Cause v. union of India, (1996) 2 SCC 752

<sup>80</sup> D.Satyanarayana v. N.T.Rama Rao, AIR 1988 AP 144

<sup>81</sup> Centre for Public Interest Litigation v. Union of India, (1995) (supp) 3 SCC 382

<sup>82</sup> Shiv Sagar twari vs. union of India (1996) 2 SCC 558

<sup>83</sup> Vineet Narayan v. union of India, (1996) 2 SCC 199

<sup>84</sup> All India judges association v. Union of India, AIR 1992 SC 165

<sup>85</sup> Bishwajeet serisha v. Dibrugarh University, AIR 1991 GAU. 27

also as interpreted by the Supreme Court of India by invoking the Fundamental Rights. Article 21 of the Constitution of India provides that “No person shall be deprived of his life and Personal Liberty except according to procedure established by law”. The rights to life and Personal Liberty is the back bone of the Human Rights in India. Through its positive approach and Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights.

By giving a liberal and comprehensive meaning to “life and personal liberty,” the courts have formulated and have established plethora of rights. The court gave a very narrow and concrete meaning to the Fundamental Rights enshrined in Article 21. In **A.K. Gopalan's Case**,<sup>86</sup> the court had taken the view that each Article dealt with separate rights and there was no relation with each other i.e. they were mutually exclusive. But this view has been held to be wrong in **Maneka Gandhi case**<sup>87</sup> and held that they are not mutually exclusive but form a single scheme in the Constitution, that they are all parts of an integrated scheme in the Constitution. In the instant case, the court stated that “the ambit of Personal Liberty by Article 21 of the Constitution is wide and comprehensive. It embraces both substantive rights to Personal Liberty and the procedure prescribed for their deprivation” and also opined that the procedures prescribed by law must be fair, just and reasonable.

In the following cases namely **Maneka Gandhi**,<sup>88</sup> **Sunil Batra (I)**,<sup>89</sup> **M.H. Hoskot**<sup>90</sup> and **Hussainara Khatoon**,<sup>91</sup> the Supreme Court has

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<sup>86</sup> A.K. Gopalan v. State of Madras, AIR 1950 SC P.27

<sup>87</sup> Maneka Gandhi v. Union of India, AIR 1978 SC P.597

<sup>88</sup> Maneka Gandhi v. Union of India, AIR 1978 SC P.597

<sup>89</sup> Sunil Batra (I) v. Delhi administration, AIR 1978 SC 1675

<sup>90</sup> M.H.Hoskot v. State of Maharashtra, AIR 1978 SC 1548

<sup>91</sup> Hussainara Khatoons No. I v. Home Secretary, State of Bihar, AIR 1979 SC 1360

taken the view that the provisions of part III should be given widest possible interpretation. Every activity which facilitates the exercise of the named Fundamental Right may be considered integrated part of the Article 21 of the Constitution. It has been held that right to legal aid, speedy trial, right to have interview with friend, relative and lawyer, protection to prisoners in jail from degrading, inhuman, and barbarous treatment, right to travel abroad, right live with human dignity, right to livelihood, etc. though specifically not mentioned are Fundamental Rights under Article 21 of the Constitution. One of the most powerful dimensions that arose through Public Interest Litigation is the Human Rights of the prisoners.

The Supreme Court of India has considerably widened the scope of Article 21 and has held that its protection will be available for safeguarding the fundamental rights of the prisoners and for effecting prison reforms. The Supreme Court by its progressive interpretation made Article 21, which guarantees the Right to Life and personal liberty, the reservoir of prisoner's rights. Under the seventh schedule of the Constitution of the India, the prison administration, police and law and order are to be administered by the respective states. The states have generally given low priority to prison administration. In fact, some of the decisions of the Supreme Court on prison administration have served as eye-openers for the administrators and directed the states to modernize prison administration.

The Human Rights saviour Supreme Court has protected the prisoners from all types of torture. Judiciary has taken a lead to widen the ambit of Right to Life and personal liberty. The host of decisions of the Supreme Court on Article 21 of the Constitution after Maneka Gandhis

case, through Public Interest Litigation have unfolded the true nature and scope of Article 21.

Judicial conscience recognized that Human Rights of the prisoners because of its reformistic approach and belief that convicts are also human beings and that the purpose of imprisonment is to reform them rather than to make them hardened criminals. Regarding the treatment of prisoners, Article 5 of the Universal Declaration of Human Rights, 1948 says “No one shall be subjected to torture or cruel treatment, in human or degrading treatment or punishment”. While Article 6 of the Universal Declaration of Human Rights, 1948 contemplates that “everyone has the right to recognition everywhere as a person before law”. Article 10(1) of the International Covenant on Civil and Political Rights lay down that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”.

The Supreme Court of India has developed Human Rights jurisprudence for the preservation and protection of prisoner's Right to Human Dignity. The concern of the Apex judiciary is evident from the various cardinal judicial decisions. The decisions of the Supreme Court in Sunil Batra was a watershed in the development of prison jurisprudence in India.

### **Rights against Hand Cuffing**

In **Prem Shanker v. Delhi Administration**,<sup>92</sup> the Supreme Court added yet another projectile in its armoury to be used against the war for prison reform and prisoners rights. In the instant case the question raised was whether hand-cuffing is constitutionally valid or not? The Supreme Court discussed in depth the hand cuffing jurisprudence. It is the case placed before the court by way of Public Interest Litigation urging the

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<sup>92</sup> AIR 1980 SC 1535

court to pronounce upon the Constitution validity of the “hand cuffing culture” in the light of Article 21 of the Constitution. In the instant case, the court banned the routine hand cuffing of a prisoners as a Constitutional mandate and declared the distinction between classes of prisoner as obsolete. The court also opined that “hand cuffing is prima-facie inhuman and, therefore, unreasonable, is over harsh and at the first flush, arbitrary. Absent fair procedure and objective monitoring to inflict “irons” is to resort to Zoological strategies repugnant to Article 21 of the Constitution”.<sup>93</sup>

While deciding the Constitutional validity of hand cuffing, the Supreme Court specifically referred to Article 5 of the Universal Declaration of Human Rights, 1948<sup>94</sup> and Article 10 of the International Covenant on Civil and Political Rights<sup>95</sup> and held that hand cuffing is impermissible torture and is violate of Article 21. In the instant case justice Krishna Iyer rightly emphasized hand cuffs should not be used in routine and they were to be used in extreme circumstances only, when the prisoner is a security risk, desperate, rowdy or involved in non-bailable offences. But in even such circumstances, the escorting authority must record the reasons for doing so. Otherwise, the court pointed out, under Article 21 of the Constitution the procedure will be unfair and bad in law.

In spite of such clear ruling of the Supreme Court against hand cuffing, the high handedness of the police personnel came to the light in **Delhi Judicial Service Association case**,<sup>96</sup> wherein the Supreme Court held that an extraordinary and the unusual behaviour of police was not

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<sup>93</sup> ibid at P 1541

<sup>94</sup> Article 5 of the Universal Declaration of Human Rights, 1948 provides that “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

<sup>95</sup> Article 10 of the International Covenant on Civil and Political Rights stipulates that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”

<sup>96</sup> Delhi Judicial Service Association v. State of Gujarath, (1991) 4 SCC 406

proper and the court laid down detailed guidelines which should be followed in case of arrest and detention of judicial officer. The Supreme Court took a serious note of whole incident and it amounts to interference with the administration of justice, lowering of its judicial authority and it amounts to criminal contempt.

It is submitted that wherever any police official acts contrary to the clear directions against hand cuffing as laid down by the Supreme Court and thus violates the basic Human Right to human dignity, he should be made personally liable to pay the compensation and this fact is clearly established in **State of Maharashtra v. Ravikanth S.Patil**.<sup>97</sup> Apart from the above the Supreme Court had delivered many cases<sup>98</sup> against hand cuffing and ruled that it is violative of Article 21 of the Constitution. In **Citizen for Democracy v. State of Assam**,<sup>99</sup> the Supreme Court said that it lays down as a rule that hand cuffs or other fetters shall not be forced on prisoner, convicted or under trail, while lodged in a jail any where in the country or while transporting or in transit from jail to another or from jail to court and back. The police and jail authorities, on their own, shall have no authority to direct transport from one jail to another or from jail to court and back”. The court declared that if it is absolutely necessary for the jail or police authorities to hand cuff, permission of Magistrate is to be obtained. The Magistrate may grant the permission to hand cuff the prisoner in rare cases. Violation of the directions given by the Supreme Court by the authorities shall be punishable under the contempt of court Act, 1971.

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<sup>97</sup> (1991) 2 SCC 373

<sup>98</sup> Sunil Gupta v. State of M.P., 1990 (3) S.CC 119; Citizen for Democracy v. State of Assam, 1995 (3) SCC 743; Khedat Mazdoor Chetna Sangath v. State of M.P., AIR 1995 SC 31

<sup>99</sup> 1995 (3) SCC 743

The Supreme Court directed the Union of India to frame rules or guidelines regarding the circumstances in which hand cuffing of the accused should be resorted to, in conformity with the judgment of the court in Prem Shankar case; and to circulate them among all the Government of the states and Union Territories for strict observance. It is important to mention that so as to put an end to hand-cuffing it is suggested that the parliament may make a suitable amendment to the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 where in, hand-cuffing should be made a cognizable offence so as to give effect to the ruling of the Apex Court of the land and also to preserve the right to live with Human Dignity, which is a important facet of personal liability of the individuals.

### **Monetary Compensation and Human Rights**

It is internationally recognized principle that right to compensation is not alien to the concept of enforcement of guaranteed right.<sup>100</sup> The development of the remedy of monetary compensation for the enforcement of Human Rights may be discussed with reference to writ jurisdiction of the higher judiciary and the ordinary original jurisdiction of the civil court. Compensation through writs is a recent development and an extension of the prerogatives of the Supreme Court and High Courts in the field of Constitutional remedies. Even though, there was much criticism on the payment of compensation under Article 32 of the Constitution, because of this Article as such itself does not expressly empowers the courts to award such relief. It is important to mention here that the seed of compensation for the violation of the rights implicit in

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<sup>100</sup> Article 9(5) of the International Covenant on Civil and Political Rights states that “Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”.

Article 21 is first sowed in **Veena Sethi v. State of Bihar**<sup>101</sup> and **Khatri v. State of Bihar (II)**.<sup>102</sup> In both the cases, one of the questions raised was if the state deprives a person of his life or Personal Liberty on violation of the right guaranteed by Article 21, is the court helpless to grant relief to the persons who has suffered such deprivation? To this question, Bhagawathi, J in Veena Sethi case observed that “the question would still remain to be considered whether these prisoners are entitled to compensation from state Government for their illegal detention in contravention of Article 21 of the Constitution.

Where in Khatri's case, the Supreme Court initiated the jurisdiction of payment of monetary compensation under Public Interest Litigation to the victims on violation of their life and personal liberty. Therefore a question of great Constitutional importance as to what relief could be given for violation of Constitutional rights was before the court. Bhagwathi .J., speaking for the court observed: “the court can certainly inject the state for depriving a person of his life or Personal Liberty except in accordance with the procedure established by law but, if life or Personal Liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered such deprivation? Why should the court not be prepared to forge new and devise new remedies for the purpose of vindicating the most precious Fundamental Right to life and Personal Liberty? Otherwise Article 21 would be reduced to a nullity, a “mere rope of sand”. The court described this issue as of gravest Constitutional importance involving exploration of new dimension of the Right to Life and personal liberty.<sup>103</sup>

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<sup>101</sup> AIR 1983 SC 339

<sup>102</sup> AIR 1981 SC 928

<sup>103</sup> Ibid at P 930 Para 3

The jurisdiction to award compensation for deprivation of Fundamental Rights of a person through writs was recognised by the Supreme Court in **Rudal Shah v. State of Bihar**<sup>104</sup> case, wherein the petitioner was detained illegally in the prison for over fourteen years after his acquittal in full dressed trial. He challenged the said act in the court by filing habeas corpus petition and contended that he was entitled to be compensated for his illegal detention and that the court ought to pass an appropriate order for the payment of compensation. The Supreme Court in this case explained the jurisdiction to award compensation under Article 32 of the Constitution by observing;

“It is true that Article 32 cannot be used as a substitute for enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts, civil and criminal. A money claim has therefore, to be agitated in and adjudicated upon the suit instituted in a court of lowest grade competent to try it. In the exercise of its jurisdiction under Article 32, the Supreme Court can pass an order for the payment of money in the nature of compensation consequential upon the deprivation of a Fundamental Right to Life and Liberty of the petitioner”.

The decision of the Supreme Court in Rudul Shah case made it clear that, through the exercise of writ jurisdiction, the Supreme Court or the High Courts have powers to award compensation for the violation of Fundamental Rights and this decision has been followed in a number of decisions by the Supreme Court and the High court's in the similar situations of violation of the Right to Life and liberty of a person.

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<sup>104</sup> AIR 1983 SC 1086

The Supreme Court in **Sebastian M.Hongray v. Union of India**<sup>105</sup> case, through a writ petition of habeas corpus awarded exemplary costs on failure of the detaining authority to produce two missing persons, on assumption that they were not alive and had met unnatural deaths at the hands of security forces. In the instant case D.A.Desai and O.Chinnappa Reddy JJ. Observed that the respondents would be guilty of civil contempt because of their wilful disobedience to the writ. The Supreme Court keeping in view the torture, the agony and mental oppression through which the wives of the persons directed to be produced has to pass, instead of imposing a fine, directed that as a measure of exemplary cost of Rs. 1,00,000/- to each of the wives of the persons.

Subsequently, in the case of **Bhim Singh v. state of Jammu & Kashmir**,<sup>106</sup> the Apex Court followed Rudul Shah and Sebastian cases, by observing that “when a person comes to the Supreme Court with the complaint that he has been arrested and imprisoned with mischievous or malicious intent and that his Constitutional legal rights were invaded, the mischief or malice and invasion may not be washed away or wished away by his being set free. In appropriate cases, the court has the jurisdiction to compensate the victim by awarding suitable monetary compensation. In this case, the illegal detention of the petitioner was held to constitute violation of rights under Articles 21 and 22 (2) of the Constitution by the Supreme Court. O.Chinnappa Reddy and V.Khalid, JJ. Stated that police officers who are the custodians of law and order should have the greater respect for the Personal Liberty of citizens and should not flout the laws by stooping to the bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. The duty of the police officers is only to protect and not to abduct. Exercising its power to

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<sup>105</sup> AIR 1984 SC 1026

<sup>106</sup> AIR 1986 SC 494

award compensation under Article 32, the court directed the state to pay monetary compensation of Rs. 50,000/- to the petitioner for violation of his Constitutional right by way of exemplary costs.

In **Saheli, A women's Resource Centre v. Commissioner of Police, Delhi**<sup>107</sup> case, the police officers raided the house of Mrs. Kamalesh Kumari. The Victim was staying in a house with her three children. The landlord of that house took the help of police to forcibly evict them from the house. During the police raid, the police trampled upon nine years child of Kamalesh Kumari resulting the death of the child. It is well settled that the state is responsible for the tortious acts of its employees. In the instant case court observed that “in the matter of liability state is liable for tortious acts committed by its employees in the course of their employment. On these facts, the Supreme Court ordered for payment of Rs. 75,000/- as compensation to the mother of the deceased child. In this case, the court ordered to recover the amount of compensation from the concerned police officer.

In **Nilabeti Behara v. State of Orissa and others**<sup>108</sup> case, the Supreme Court struck down the doctrine of sovereign immunity in the arena of public law. This is the case of the custodial death of a person. In the instant case one youth by name Suman Behara was taken into police custody in connection with the investigation of a theft on 1st December, 1987, and on the next day, his dead body was found on the railway track. There were multiple injuries on the body of Suman Behara. The petitioner Nilabati Behara, addressed a letter to the Supreme Court under Article 32 of the Constitution of India. The police took the plea that the deceased was taken to custody but he managed to escape from the custody and that

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<sup>107</sup> AIR 1990 SC 513

<sup>108</sup> AIR 1993 SC 1960

they could not trace him. The police denied the custodial death. In this context, the Supreme Court ordered enquiry by the District Judge of Sundergarh, Orissa. The report of the District Judge reveals that there is a torture of the deceased with eleven external injuries and as a result of these injuries inflicted by the police, the report confirmed that the death is in the nature of custodial death. The Supreme Court awarded Rs. 1,50,000/- as compensation to the mother of the deceased.

In the instant case, the court further held and clarified that “public law proceedings” are different from private law proceedings” and the award of compensation in proceedings for the enforcement of Fundamental Rights under Article 32 and 226 of the Constitution is a remedy available in public law. It was rightly observed: “the court is not helpless and wide powers given to the Supreme Court by Article 32, which itself is a Fundamental Rights, imposes a Constitutional obligation on the court to invent such new tools, which may be necessary for during complete justice and enforcing the Fundamental Rights guaranteed in the Constitution which enable the award of monetary compensation in appropriate cases”.

To support the above observation, the court rightly referred to Article 9 of the International Covenant on Civil and Political Rights, 1966 and held that the state is liable to pay compensation for police atrocities. The court further held that the said provision indicates that an enforceable right to compensation is not alien to the concept of a guaranteed right. It is also pertinent to mention that the provision of compensation to the crime victims is a crying need of the hour. The International Covenant on Civil and Political Rights, 1966 indicates that an enforceable right to compensation is conceptually integral to Human Rights.

It would suffice to state that the provisions of the covenant which elucidate and go to effectuate the Fundamental Rights guaranteed by the Constitution under part III can certainly be relied upon by courts as facets of those Fundamental Rights and hence enforceable as such. It is doubtful whether it was right on the part of the court to reach such a conclusion without ensuring authority of such covenants and leaving it for the decisions of a later forum. It is also to be noted that the covenant on civil and political rights, 1966 was ratified by India with a reservation that Article 9(5) of the said covenant is not applicable in India. Hence it is submitted that reading of the covenant into the Indian law is not correct.

### **Nature of the Constitutional Remedy**

A perusal of the above judicial panorama in the foregoing discussion makes it clear that, at present, the power to grant compensation through the writs is an established remedy. Compensation has been awarded by the Supreme Court by referring to its different concept like “Exemplary costs”, “palliative measures”, solarium or “exemplary damages”.

On the basis of the above discussion it can be inferred that the development of Constitutional remedy affords an effective remedy in the form of monetary compensation on infraction of Human Rights. However this remedy is a distinct remedy and not a substitute of the remedy under civil law. The Constitutional remedy is only an additional remedy and an aggrieved person avail other remedy available to him under law. In Nilabetis case, a distinction is made between the remedy of compensation available under the public law i.e., Constitution and the private law, i.e. civil law of Tort. In this case Anand J, in his concurring judgment further explained the distinction by observing that “the payment of compensation

in such cases not to be understood, as it is generally understood in a civil action for damage under the private law, but in the broader sense of providing relief by an order of making “monetary amends”, under public law for the wrong done due to breach of public duty of not protecting the Fundamental Rights of the citizen. The compensation is in the nature of exemplary damages awarded against the wrongdoer for the breach of its public law duty and it is independent of the rights available to the aggrieved party to claim compensation under the private law in action based on tort through a suit instituted in a court of competent jurisdiction or to prosecute the offender under the penal law.

Therefore, the monetary compensation through the writs for violation of Human Rights and fundamental freedoms is an acknowledged remedy to uphold the Constitutional guarantee unlike civil law remedy, though Constitutional remedy is not in the nature of damages, for the loss suffered, yet affords monetary relief to an aggrieved person. The very nature of the Constitutional remedy suggests that it is subject to certain inherent limitations viz., precise amount of compensation to make good the loss and Personal Liberty of the concerned officials are the issues which can only be properly adjudicated in a civil suit. The Constitutional and civil law remedies being supplementary to each other also require a discussion on the question of applicability of doctrine of sovereign immunity in their respective forums.

### **Child Labour and Human Rights**

The evil of employment of children in agriculture and industrial sectors in India is a product of economic, social and among others,

inadequate legislative measures. The founding fathers of the Constitution, being aware of the likely exploitation by different profit makers for their personal gain specifically prohibited employment of children in certain employment. Article 24 of the Constitution deals with the Child Labour directly, where as Articles 15(3), 21A, 39 (e), 39 (f) and 47 deal with Child Labour indirectly.

Article 24 of the Constitution prohibits the employment of children below the age of Fourteen years in any factory or mine or engaged in any other hazardous employment. Article 15(3) of the Constitution enables the State to make special provisions for the welfare of children. The directive principle of State policy contained in Article 38 (e) directs the state to safeguard the tender age of children from entering into jobs unsuited to their age and strength forced by economic necessity. Article 38(f) imposes a duty on the state to secure facilities for the healthy development of children, and to protect childhood and youth against exploitation as well as moral and material abandonment. Where as Article 21 A directs the state shall provide free and compulsory education to all children of the age of 6 to 14 years. Article 47 imposes a duty upon the state to raise the levels of nutrition and standard of living of its people and improve public health.

The government of India has enacted various welfare legislation for the working children from time to time. The basic aim of the legislation is to prohibit the employment of children in certain employments and regulate the conduct of the employers of child workers in such a way that, these poor innocent child are not exploited any more. The protective provisions of the enactments do not cover children employed in smaller establishment. However, the Government of India enacted the Child Labour (Prohibition and Regulation) Act, 1986 which

prohibits the employment of children in hazardous work and also regulates the conditions of work in certain other employment where the employment is not prohibited. The Act has many provisions to be welcomed, but at the same time, it has lacunas and its own limitations.

### **Bonded Labour and Human Rights**

This is unfortunate that even after so many years of independence and more, certain obnoxious practices like caste system, untouchability, bonded labour and forced labour continue in the Indian Society. They are now being questioned and challenged by the present day society in the changed context of the social order in the welfare society, where rational and sophisticated thinking, Human Dignity, liberty and equality are considered more important than ever before.

In India the Bonded labour system continues to be the most pernicious form of human bondage. Under such system a worker continues to serve his master in consideration of debt obtained by him or his ancestors. Bonded labour can be intergenerational or child bondage or loyalty bondage or bondage through land allotment. Most of these labourers come from the lowest strata of the society such as the untouchables, Adivasis, or agricultural labourers. Bonded labour became a mere play thing in the hands of a few privileged persons. Attempts have been made both at National and International Level from time to time to eradicate forced labour. Every International instrument dealing with the Human Rights has prohibited the use of Forced or Compulsory Labour.

The Constitution of India guarantees Fundamental Rights against exploitation. Article 23 of the Constitution of India prohibits "Traffic in human beings and begar and other similar forms of forced labour. The contravention of this Constitutional provision is made an offence

punishable in accordance with the law. To give effect to this Constitutional mandate parliament has enacted Bonded Labour System (Abolition) Act, 1976. Efforts were thereafter initiated for identification, release and rehabilitation of bonded labourers in different states. The rehabilitation of Bonded labour has been included as one of the important items in the 20 point Economic programme. The system however is still prevailing in some other many parts of India.

Keeping in view the seriousness of the problems of Bonded Labour System in India, the Supreme Court has endeavoured to play an important role in recognising the right to live with human dignity, a reality for millions of Indians and has protected them from exploitation. The court has not only given the widest possible meaning to the Fundamental Rights enshrined in Articles 21 and 23, but also taken into its consideration, the various factors which were responsible for the failure of various other social welfare legislations. In **People's Union for Democratic Rights v. Union of India**<sup>109</sup> case and **Bandhua Mukthi Morcha v. Union of India**<sup>110</sup> case the Supreme Court of India recognised the value of field work and socio-legal research by social scientists and social action groups as the basis of factual data for the exercise of its writ jurisdiction under Article 32 of the Constitution for effective enforcement of Fundamental Rights of Socially and economically disadvantaged group of the society.

### **VIII. The Media**

Under the Indian Constitution, the freedom of information is implicitly covered under Article 19 and Article 21. The media has been playing a very crucial role in the promotion and protection of human

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<sup>109</sup> AIR 1982 SC 1473

<sup>110</sup> AIR 1984 SC 802

rights in India. The role of the media, print as well as audio-visual, acquires tremendous significance in the promotion of human rights. The media has tremendous power to mould public opinion against age-old societal wrongs like untouchability, manual scavenging and discrimination against the girl child. It can also arouse society's indignation against child labour, child prostitution and child marriage.

The common man is in a position to understand human rights through press reports and audio-visual media. Through these modes, masses are made aware of their rights and also made familiar with the institutions they can approach for redress in case of violation of their human rights.

The NHRC has taken *suo motu* cognizance of press reports in several cases and initiated proceedings. Interestingly, the first case taken up by the Commission was related to the unprovoked firing by the Border Security Force (BSF) personnel on unarmed civilians in Bijbehra, Jammu and Kashmir.<sup>111</sup>

However, the media has exposed itself to criticism. While disposing of a case of contempt of court proceedings against the editors of two newspapers recently, the Supreme Court observed:

It is the duty of a true and responsible journalist to inform the people with accurate and impartial presentation of news and his views after dispassionate evaluation of the facts and information received by him and to be published as a news item.

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<sup>111</sup> On 1 November 1993, the Commission took *suo motu* cognizance of the incident, Annual Report, 1993-94, pp. 11-12.

The editor of a newspaper or a journal, the Court said, has a greater responsibility to guard against untruthful news and its publication. "If the newspaper publishes what is improper, mischievously false or illegal and abuses its liberty, it must be punished by a Court of law" While a free and healthy press is indispensable to the functioning of a true democracy, the Court said, the freedom of press is subject to reasonable restraints.<sup>112</sup>

The media also has a tendency to launch "trials by the media", even sentencing by the media, while a court proceeding is underway. Further, increasing vulgarity and obscenity in the media could also give rise to human rights violations. On the whole, if the media is properly used, it can foster the right kind of attitudes, beliefs and conduct which conform to human rights principles.

### **Media for Social Justice**

The role of legislators and the Court in their efforts to maintain "rule of law", to usher in "economic and social justice" and the administrative apparatus needed for securing the advantages and benefits to the weaker sections have been described at length. However, the media in the country has been playing a very significant role to the cause of social justice in a variety of ways. Despite the criticism that the media is not playing its rightful role and engaging himself in politics of the day to the neglect of portraying the good work done by all sectors concerned with the task of promoting social justice, it is necessary to point out the good work done by the media and its potentialities and capabilities to play a more vital role in future.<sup>113</sup>

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<sup>112</sup> Mani, n. 2, p. 61

<sup>113</sup> See AIR 1996 (Journal Section) at 52.

## **Denial of Right to publish speech is violative of Article 19(1)(a)**

Speech is God's gift to mankind. Through speech a human being conveys his thoughts, sentiments and feelings to others. Freedom of speech and expression is thus a natural right which a human being acquires on birth. It is, therefore, a basic human right. "Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek and receive and impart information and ideas through any media and regardless of frontiers" proclaims the Universal Declaration of Human Rights, 1948. The People of India declared in the preamble of the Constitution which they gave unto themselves their resolve to secure to all citizens, liberty of thought and expression. This resolve is reflected in Article 19(1)(a) which is of thought and expression. This resolve is reflected in Article 19(1)(a) which is one of the Articles found in Part III of the Constitution which enumerates the Fundamental Rights. The Article reads as under :

"Article 19(1). All citizens shall have the right,—(a) to freedom of speech and expression",

Article 19(2) which has relevance may also be reproduced:—

"19(2). Nothing in sub-clause (a) of clause (1), shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of (the sovereignty and integrity of India), the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence".

## **Seeking Justice by Newspaper**

When individuals can address letters to Judges seeking justice to a helpless woman detained illegally or in violation of law,<sup>114</sup> there can be no impediment for a media representative or in professionalist in writing a story in the newspaper columns drawing the attention of courts to serious infractions of law. In fact, as noticed in many cases, this has been done; for instance a story appearing in daily newspaper (September 1985) under the heading ‘SAINIK KI PATNI CHALIS SAL SE PENSION KE LIYE, BHATK RAHI HAI’ (Widow of havildar denied pension for the last 40 years). The Chief Justice of Rajasthan took cognizance of the report<sup>115</sup> and was able to decree that she was entitled to concession and benefits which were to be given to a person’s family and directed the Government to pay the widow all the arrears of pension within one month and in default interest at the rate of 12% on the arrears.<sup>116</sup>

The media also has a tendency to launch “trials by the media”, even sentencing by the media, while a court proceedings is underway, Further, increasing vulgarity and obscenity in the media could also give rise to human rights violations. On the whole, if the media is properly used, it can foster the right kind of attitudes beliefs and conduct which conform to human rights principles.

## **Press as a Social Scientist**

The press and other media have played the role of a “social scientist”, “critic”, evaluator of plans and schemes by provoking ideas

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<sup>114</sup> P.B. Vijay Kumar v. State of A.P., AIR 1988 AP 295

<sup>115</sup> Ram Pyari v. Union of India, AIR 1988 Raj 124.

<sup>116</sup> See AIR 1996 (Journal Section) at 53.

and thoughts, helped the poor and weaker sections, to have access to justice and in the matter of correcting arbitrary and capricious power of the executive and by various institutions charged with the responsibility of dispensation of social justice. In addition, they have contributed to the maintenance of “rule of law” and resisted forcibly any attempt to degrade “democracy” and “free society”. The power of the press reflected through “public opinion” enables the victory of opinion over armed forces of the Government.<sup>117</sup> It has served as the main source of information, discussion and advocacy to reach the public.<sup>118</sup> It can facilitate thought and discussion, advance civilization, help in creating a world community, promoting comprehension and appreciation of the goals of a free society.<sup>119</sup> The attempts of the Government as a wielder of power cannot be restrained from exercising the same arbitrarily or capriciously, without independent press.<sup>120</sup>

If this approach is made, the media can be a potential instrument to evaluable measures to promote economic and social justice, and to pinpoint in what manner, defects and deficiencies are found in them. It could offer variable and constructive suggestions for effective implementation of laws.<sup>121</sup>

## **IX. The N.G.O**

The subject of role of NGO in the promotion and propagation of human rights has assumed very great global importance, be that an advance country, developed nation or under developed country.

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<sup>117</sup> Bryce “Modern democracies” Vol. 1, at 105, quoted in AIR 1996 (Journal Section) at 52.

<sup>118</sup> Report of the Royal Commission on Press, Para 562.

<sup>119</sup> A free responsible press—A report of the commission on the freedom of the press at 3,4, quoted in AIR 1996 (Journal Section) at 52.

<sup>120</sup> Friedrich, “Constitutional Government and Democracy”, at 512, quoted in AIR 1996 (Journal Section) at 52.

<sup>121</sup> See Social Justice and Media; Problems and Perspectives quoted in AIR 1996 (Journal Section) at 52, 53.

It is said silence always nourishes oppression. The civil society organizations and human right defenders generally known as NGOs are the eyes and ears for protecting and promoting human rights. They play an important role to become a concrete expression of International, National, regional and local voice of people, who are oppressed and suppressed. It is from this angle they require a new strength to resolve in their actions, to promote the twin pillars of equality and non-discrimination.

It is experience the world over that when human rights violations take place, these NGOs respond by drawing public attention to the abuses. This public exposure makes them a vulnerable target for repressive measures and harassment. In case of NGOs who by documenting and exposing human rights violations, and; holding government accountable by promoting human rights awareness, debating on national and international level, many of them find their own rights flagrantly violated. Such attacks include intimidation and harassment, arbitrary arrest and detention, disappearances, torture and other physical violence. This is clear from UN Special Rapporteur's report 1988.

To overcome these hurdles, the United Nations' Commission on human rights adopted the Declaration, 1988," on rights and responsibilities of individual, groups and organs of the society to promote and protect universally recognized human rights and fundamental freedoms". It lays down a set of principles and rules designed to ensure the freedom of action of human rights activists. Every State is under obligation to provide and open conducive environment to enable NGOs to function freely and openly within their societies in promoting and promoting human rights and further to strengthen compassion, develop partnership and consult regularly with NGOs and allow other sector of

civil society to harness their experience and exercise. Thus, every one is entitled to enjoy the rights of human rights activists individually and in associations with others.

Sound and vibrant national government institutions – legislature, executive and judiciary are crucial to establishing enabling environments for eliminating poverty, promoting equality and protecting the environment. Strengthening governance through human rights related capacity development will help achieve these goals.

Government institutions are responsible for respecting, protecting and promoting human rights. But they are not the only ones involved in human rights and sustainable human development. There are other civil organization such as human rights NGO's and other law related NGO's, Socio-economic NGOs, community organizations, schools, indigenous people's organizations, women's advocacy groups and the media. They also play a crucial role in monitoring, protecting and promoting human rights. Civil society organizations can monitor human rights even under extreme or authoritarian political conditions.

There are number of NGOs working in India in various fields of human rights, specifically in the field of child welfare, environment, women rights, bonded labour, old age care, health and human rights, disabled rights and rehabilitation of manual scavengers. There are various NGOs working as national sections of international NGOs, and, indeed many NGOs, without any direct international ties have succeeded in implementing human rights law in ways unavailable to international NGOs. Success of a large number of NGOs depend solely on the functioning of its national section. This is particularly true in the case of Amnesty International, due considerably to its ability to mobilize the

efforts of local groups who work for the human rights of named prisoners.<sup>122</sup>

The role of local NGOs manifest a personal concern for the release of prisoners and work towards that end by writing letters to prison officials, judges, and various government officers of the State involved, by visiting embassies and by sending to write letters directly to their adopted prisoners or to his or her family thereby giving moral support, and to provide economic and other assistance where possible.

The major problem with the Indian NGOs is that there is a lack of co-ordination of their activities in terms of their fields, territorial areas, and target group of their activities. Indeed, at times, they reveal a sense of rivalry.<sup>123</sup> It cannot be doubted that a person-to-person and energetic approach can be effective when the more professional, sophisticated, better researched, and discreet efforts of international NGOs are not successful.

NGOs are active in nearly every sphere of international human rights. These NGOs have advocated and helped to draft international human rights norms in multilateral treaties and resolutions, also assisted intergovernmental organisations and governments in the implementation of human rights norms. Indian NGOs are playing an important role not only in monitoring human rights violations, but equally in rehabilitation of victims and promotion of implementation of human rights.<sup>124</sup>

NGOs have been playing a crucial role in the protection of non-derogable rights of people. There are several instances where NGOs were

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<sup>122</sup> See Amnesty International Report (London, 1977), p. 79

<sup>123</sup> Cf. Mani, n. 2, p. 60

<sup>124</sup> Ibid.

the first to report violation of human rights to appropriate authorities. The NHRC has taken action on several human rights violation complaints mainly reported by local NGOs from different parts of the country. In the *Chakma Refugees* case, the NHRC approached the Supreme Court after receiving a complaint from a NGO named People's Union for Civil Liberties. However, similar issues were raised by a second organisation, the Committee for Citizenship Rights of the Chakmas (CCRC).

NGOs can play a significant role in the promotion and protection of fundamental rights of people. It is a sacred duty of NGOs to educate the local masses about their rights and report each case of violation of human rights to the appropriate forum.

Thus, NGOs are playing a major role in pushing for sustainable development not only at International level but local and National Level. Campaigning groups have been key driver of inter governmental negotiations, ranging from the regulations of hazardous wastes to a global ban on land mines and the elimination of slavery. Thus NGOs supplement the efforts made by government. Local NGOs reach the grass-root level and provide relief to disaster affected people.