



# Human Rights and Education



Editor

Dr Kakali Boruah  
Dr Kishor Kr. Shah





**Human Rights and Education  
Proceedings of  
*National workshop*  
on  
**HUMAN RIGHTS AND EDUCATION**  
held on  
19<sup>th</sup> December, 2016**



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Proceeding of UGC sponsored National Workshop  
on "Human Rights and Education" held on 19<sup>th</sup>  
December, 2016, organised by A.D.P. College,  
Nagaon, Assam.

**SOUL**

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# **Anandaram Dhekial Phookan College**

**Nagaon, Pin-782001 (Assam)**

**Estd. 1959**

***Dr. S. U. Ahmed, M.Sc., P.A.D.***

***Principal***

## **FOREWORD**

Anandaram Dhekial Phookan College has always stood for quality education and social responsibility. So we have organised different academic events from time to time on issues relevant to the society. The national workshop on **Human Rights and Education** held on **19<sup>th</sup> December, 2016** was one such endeavour of this college.

We are immensely grateful to all scholars who participated in the one day workshop and made it a success. Human Rights is the most important area of legal issues, but it gets the minimum importance. So the papers presented in the workshop, which have been compiled in this book, will go a long way in illuminating people at large about different aspects of human rights as well as its relation with education. We hope it will fulfil a long-felt requirement for analytical book on this issue.

The special thanks go to Ajay Veer Singh, the senior advocate of Supreme Court of India, who delivered the key-note address in a lively manner. The faculty members, especially the organizing committee left no stone unturned to make the workshop successful. The college administration extends sincere thanks to all of them.

**(S. U. Ahmed)**

**Principal,**

**ADP College, Nagaon**



## *From the Desk of the Editorial Board...*

Human rights are moral principles describing some standards of human behavior so that it does not impair the life of others. Hence they are defined as fundamental rights for a person regardless of nationality, language, religion, ethnic origin or any other status. The concern for these rights has made the countries impose an obligation on the citizens to respect the human rights of others. However different socio-political-economic factors impair the implementation of these rights, whereby the living conditions or work atmosphere are affected in a detrimental way. Very often the state machinery is also involved in this unwarranted practice. This makes the study of human rights quite challenging.

The UGC sponsored National Workshop on "Human Rights and Education", organized by Anandaram Dhekial Phookan College (A D P College) was held on December 19, 2016. The fundamental objective of this National Workshop was to amalgamate academicians, lawyers and activists from different parts of India working in academia, judiciary, administration and community life with a common goal of ensuring human rights for all. Nearly 40 delegates from different Colleges and Universities participated in the workshop and presented their papers in different issues of Human rights and education. Eminent lawyer of Supreme Court of India, Sri Ajay Veer Singh Jain delivered the Key note address

in the workshop. The one day workshop was divided into six sessions including inaugural and valedictory function.

The papers presented in the workshop have been included in this volume with minor corrections. The papers focus mainly on Human Rights violation in Assam and other parts of India and some of the other issues like the role of the State to protect Human right, Judiciary responsibility, Custodial death, the problem of Witch Hunting, the role of media, constitutional rights for women and children etc. This volume of workshop proceedings make a sincere attempt to focus on different burning issues of human rights violation.

The publication of the proceedings of the National Workshop has been possible only because of UGC grant and valuable guidance of Dr Sarif Uddin Ahmed, Principal ADP College. In addition, we would like to make more general acknowledgement to a number of people who have helped us with their comments, advice, co-operation and encouragement. Dr S K Borkakoti, Dr Abu Hanifa, Dr Nityananda Patnayak, Dr Gayatree Das, Dr Sabita Devi, Pyar Md Raina, Dr Mousumi Saikia and all the members of workshop organizing committee. We extend our gratefulness to all the paper presenters, participants, research scholars who came from different parts of the state and made our endeavour success. We are especially grateful to all the members of ADP College family for their co-operation, valuable suggestions and helping hand extended us to make the workshop a grand success.

**Dr Kakali Boruah  
Dr Kishor Kr. Shah**

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# **National Workshop on Human Rights and Education**

**Ajay Veer Singh, Advocate**  
Supreme Court of India, New Delhi-110001

I am grateful to the organisers for giving me this opportunity to address this workshop on such a topic that has kept this civilisation preoccupied for centuries. Thinkers and philosophers have pondered over the eternal question-whether the rights were natural or they are human or they are fundamental? The citizens of today are in search for answers to these questions loaded with ever expanding definition of the term "liberty" in the context of human beings. And the more we work on the subject of human rights, the more we become aware of their violations around us. Human rights are an enigma. To the extent that today many people ask whether these rights are real or just ornamental ?

The daily news is the closest and the perennial reminder that we are far from the cherished goal of achieving the civilisation of sensitive human beings who believe in the true spirit of the dictum, "All men are equal".

Historically the evolution of mankind has been a journey from tribal societies to the complicated governments of today with infinite state power and resources. The thought of human liberty has travelled across the centuries through the "Magna Carta" (1215 AD), Bill of English Rights (1689 AD), French Revolution (1789 AD) and the Constitution of the United States (1776) The journey consummated in the Universal Declaration of Human Rights stating that, "all human beings are born free and

equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

Justice V. R. Krishna Iyer had unflinching faith in the UDHR. He said and I quote, "This profound proposition is central to the Charter of the United Nations which affirms its faith in the Fundamental Rights and in the dignity and worth of the human person. Human personhood, in its holistic dimensions, supramental potential and ultimate destiny, is the inscrutably sacred, inalienably sublime and integrally woven human divine unit of Cosmic Creative Intelligence." He goes on to say that "Society is the human home, Law its discipline and Justice its perennial pursuit. The Jurisprudence of personhood or the philosophy of right to life in large freedom and expression of personality, as a fundamental of the world human order, focuses on this higher process as deserving of the loftiest concern of culture and vigilant commitment of law. Jurisprudence and Judicial Justice are but jargonised gibberish and robed caricature."

On one side of the thought are the positive dreamers and on the other side we have had the sceptics. To quote Professor Amartya Sen, "It is not disputed that the invoking of human rights can be very attractive as a general belief, and it may even be politically effective as rhetoric. Scepticism and anxiety relate to what is thought to be the 'soft' or the 'mushiness' of the conceptual *grounding of human rights* as just loose talk - well-meaning and *perhaps laudable* loose talk-which cannot, it is presumed, have much intellectual strength."

Professor Sen goes on to cite Jeremy Bentham, from his Anarchical Fallacies written during 1791-1792, "Bentham insisted that 'natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, nonsense upon stilts', by which, I take it, he meant some kind of an artificially elevated nonsense." According to Bentham the human rights were only those rights which had the sanction of law. And the rest were only the

imaginary rights. Bentham however ignored the crusaders of human rights who made possible the UDHR declaration in 1948 and all the milestones achieved in the past centuries.

Despite Bentham the idea of Human Rights kept the march on and achieved definite milestones. And the UDHR was a watershed victory of mankind. Justice V.R. Krishna Iyer said and I quote, "To write this radical, human manifesto of the person is a revolutionary paradigm shift, a human ascent and divine descent whose locomotive is the liberating hunger of the soul driving us all towards a distant perfection. Shakespeare's diction poeticises the Humanist manifesto I have in mind: "What is peace of work is a man! How noble in reason! How infinite in faculty-in form, in moving, how express and admirable! in action how like an angel in apprehension how like a God! The beauty of the world! The paragon of animals!"

The ideal world with all the human rights has been summed up in the lines of Rabindra Nath Tagore,

"Where the mind is with our fear and the head is held high;

Where knowledge is free:

Where the world has not been broken up in fragments by narrow domestic walls:

Where words come out from the depth of truth;

Where tireless striving stitches its arms towards perfection;

Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit;

Where the mind is led forward by thee into ever widening thought and action-Into that Heaven of freedom, my father, Let my country awake."

I think no bill of rights is as exhaustive about the definition of human rights as these lines Rabindra Nath Tagore. The poets are at times more expressive than the Constitutions and the Bill of Rights in the Parliaments.

H.G Wells cautioned in his, 'Outline of history': "Human history becomes more a race between education and catastrophe" and if we want to get over the worst fears of mankind then we must admit the role of law and jurisprudence in educating the world populace.

We are at a threshold of history. The technological revolution is in the fast lane. It is beyond human comprehension and we have to be in touch with the latest through internet. (Facebook and Whatapp). It is a live update all the time. I would not be surprised if some people here know me through my Facebook account or what ever information is available on the internet about me.

The dangers of technology pose a serious challenge to the protagonist of human rights. The technology and automation follows the capital and results in more concentration of power than we have witnessed ever in the past. Look at the American example; there is no middle class there. Either there are super rich or there are poor who have been provided the basic needs. This pattern is in the process of being replicated everywhere. The rich will become richer and the poor will grow poorer. But they will be kept alive to sustain the system; and even at the cost of their human rights. Is it an inevitable consequence of the scientific and economic progress? I leave this question for all of you to discuss. And I will also work upon to get the answers.

In the context of India historically we celebrated when the UN General Assembly declared the Universal Declaration of Human Rights on 10th December 1948. Our Constitution makers were enchanted by the positive phrases and adopted the UDHR in Chapter III of the Constitution of India. We have actually the best drafted *guarantee of human rights* if we look at Chapter III of the *Constitution*. But unfortunately the framers put the most important *of them into the category* of "Directive Principles" which are not *enforceable* by the Court. They remain fundamental in the

governance of the Country and the state is under no legal obligation to apply them in making laws.

(Caveat-If the law makers have read the Constitution)

And this puts an extra responsibility on the shoulders of the Judiciary. Over the years the Supreme Court of India has amplified the reach of the Fundamental Rights in the light of the Directive Principles of state policy. In 1989 the Apex Court said in *V. Markanday versus State of Andhra Pradesh*,

"Provisions contained in the chapter on Directive Principles of State Policy are not enforceable by any courts. But while considering the questions of enforcement of the Fundamental Rights of a Citizen, it is open to the court to be guided by the Directive Principles to ensure that in doing justice the principles contained therein are maintained. The Constitution aims at bringing about a synthesis between the "Fundamental Rights" and the "Directive Principles of the State Policy" by giving former a place of pride and to the latter a place of performance, together they form the core of the Constitution. They constitute its true conscience and without faithfully implementing the Directive Principles, it is not possible to achieve the welfare state contemplated by the Constitution."

The Chapter III of the Constitution was amended w.e.f. 1st April 2010 by inserting a separate Article 21-A to include Right to Education as a Fundamental Right on the basis of the International Covenants on Human Rights which recognise that a minimum level of literacy and minimum educational qualification is necessary for human development, enjoyment of human rights and for effective participation of people in democratic process. Article 21-A reads, "That the state shall provide free and compulsory education to all children of the age of 6 to 14 years in such a manner as the state may, by law determine."

In *Ashok Thakur versus the Union of India*, (2008) 6 SCC 1, a five Judge Constitutional bench of the Supreme Court emphasised the necessity of providing basic education. The court observed.

"The most important Fundamental Right may be Article 21-A since without Article 21-A the other Fundamental Rights are effectively rendered meaningless. Education stands above all the other rights, as one's ability to enforce ones' Fundamental Rights rises from one's education. Education should be compulsory because in essence the citizen is only free when he can make a meaningful challenge to his fellow citizens or governments' attempts to curtail his natural freedom, With our education, a citizen will never come to know his other rights nor would a citizen have the resources to adequately enforce them without education. This is ultimately why judiciary must over-see government's spending on free and compulsory education. The state is under a mandatory obligation to implement Article 21-A on priority basis."

The court further said, "Basic primary education is Constitutional right and there is no corresponding right to higher education. Spending on higher education at the expense of primary/secondary education would result in curtailing the Fundamental Right under Article 21-A"

The Courts have throughout expanded the scope of Article 12 with the clear intention to inject respect for human rights and social conscience in our corporate structure.

The cases that mark the contours of human rights jurisprudence from the Judiciary have been very many and I quote a few of them which are poetry to any lover of human rights in India.

1. Francis Coralie versus Administrator Union Territory of Delhi. (1981)

2. Olga Tellis *versus* Bombay Municipal Corporation (1985)

*Pavement Dweller* case. "deprivation of the means of livelihood also means the deprivation of life." Life means *something* more than animal existence.

3. Bandhua Mukti Morcha *versus* Union of India (1984)  
Right to life means not only animal existence but life with human dignity.

4. Sheela Barse versus State of Maharashtra. (1987) Article 21 -the word life has been construed to cover the humane living conditions of the inmates in jails.

5. Sunil Gupta versus State of Madhya Pradesh (1990) Handcuffing of under trial prisoners should not be made as a rule.

6. Keshwananda Bharti Basic structure of the Constitution.

Thus essentially the courts were on the trail of Dr. Ambedkar's statement in the Constituent Assembly. He said and I quote:

"In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provided on the constitution, without any direction as to what our economic ideal, as to what social order ought to be. We deliberately included the Directive Principles in our Constitution".

Despite our trust with destiny for almost seven decades now, there are question marks raised on the performance of successive governments on the fulfilment of the promises in the Part III and IV of the Constitution. We still have human rights violations and there is no denying the fact. I am sure you will agree with me that still the human right violations are a daily routine. The high-handed of the state machinery is being tasted by all. We have to pay bribe for small procedures. Despite the Honourable Supreme Court passing so many judgments to pronounce the importance of the human rights there are about thirty-million cases pending before the courts today. If a person does not get justice during his life time then is this not violation of Article 21.

What ails the governance of the country? or say What ails the justice delivery system of the country ? I may ask you whether the system of parliamentary democracy has suited us to deliver what

the constitution makers had deemed off? Or whether democracy and human rights are not complimentary to each other ?

I may state that democracy and human rights are not synonymous. Election only gives you an opportunity to choose your tyrants. Is it not the juncture where we Indians seriously need to discuss the change in the form of government. Why not have an "Elective dictatorship"? We can do so without changing the basic structure as contemplated in Keshwananda Bharti case by the Honourable Supreme Court of India. Constitution may remain supreme but the form of government may undergo a change of format. Parliamentary democracy gives chance to the local mafias and musclemen to get into the assemblies and even the parliament. We need some kind of government wherein we can have proportional representation in the parliament on the basis of the total votes polled for any party. The representatives of the party can be sent by the party by their own choice. There can be other ways also to control the criminal elements entering the political arena.

Nani Palkhiwala the legal legend said and I quote, " In the world today, governments that are most successful are authoritarian ones and veneration for human rights promises to be a cult of slow growth. That is because human rights cannot exist in a cultural and economic vacuum. Their chances of being understood and respected improve as the economic and educational level of the society rises. It is a noble maxim that it is better for a man to go wrong in freedom than to go right in chains; but it sounds like an empty rhetoric to people who live in economic chains below the minimum subsistence level."

Yet the economic and social rights achieved by the present day democracies cannot be ignored. We have to understand that the rights are not only against the government but also against the people. My liberty extends to the extent where your liberty starts. *We all have our obligations* to each other. The test of a civilisation is how it treats its poor.

Human right violations may take place by virtue of neglect by the government. But the worst kind of violation is when the state follows a policy which deprives the population of its human rights to decent living; right to food, medicine and education etc.

And the most important reason is the pattern of human behaviour towards its own species. We take liberty as licence. See how we drive on the road. See how we break the queue. See how we bribe to jump the queue. See how we ignore other claimants to our advantage. See how you pray God making only for yourself and your family; why not the entire society.

And it is so because you have not been trained and educated in enjoying your liberty. Liberty never travelled alone since the French revolution; equality and fraternity came along. And we have forgotten them. Your liberty comes with responsibility; It comes with morality; it comes with your duties; And it demands your respect for law and justice. Remember Article 51-A. If you want the Constitution to work then apply the Fundamental duties to yourself.

I am tempted to quote Palkhiwala again, " Liberty has a hypnotising sound; while , unfortunately responsibilities has no sex appeal. Freedom is like alcohol-it must be taken in moderation. Perhaps we are making life too easy for criminals and too difficult for law-abiding citizens. In free societies too many crooks break the law, blight young lives, traffic in drugs, and claim the fundamental right to exploit commercially sex and violence."

In this light think of the human rights of those who are hardened criminals, who kill hundreds of people and there is no evidence against them. What do you say of the freedom to burn crackers of those insensitive people who choked Delhi and the Delhiites had a tough time to breathe for a fortnight?

We have to strike a balance between individual liberty and the common good. We have to educate each one about their rights and prepare them for the endless debate as to what is the best

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form of governance. The debate is endless. But the vibrancy of the arguments will show the level of awareness among the citizens on the both the sides. The debate shall never have a solution. The definition of liberty will keep evolving and the changes in technology will give better solutions to guarantee the delivery of human rights to the people.



# Custodial death and Human Rights violation

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## **ABSTRACT:**

Human Rights are some basic and fundamental rights for human beings to live a life with dignity. To violate someone's human rights is to treat that person as though he or she were not a human being. Though human rights are governed by moral principle, they are very much essential for human well being and solidarity. Human rights are held by all persons equally, universally and forever. Today every civilized country guaranteed these rights with constitutional provisions. The preamble to the constitution of India, the Fundamental Rights mentioned in Part-III, the Directive Principle of State Policy in Part -IV and the Fundamental Duties mentioned in Part-IV A constitute the human rights framework in the Constitution of India. It is obligatory for all member state of UNO to observe minimum standard to protect and promote human rights. However different socio-political, economic factors impair the implementation of this rights thus leading to violation of human rights. In this connection an important factor leading to violation of human rights is custodial death around the globe. The deaths while in custody remains a very controversial topic as it is believed that the main reasons of these deaths are kept in darkness from the world. According to the Joint Committee on Human Rights (JCHR), "When the state takes away a person's liberty, it assumes full responsibility for protecting their human rights. The most fundamental of these is the right to life." As we go through this paper, we will discuss more about custodial deaths and its impact on international law and human rights.

## **INTRODUCTION**

The most fundamental part of human rights is the right to life. This type of human rights protects people detained by the State. A custodial death violates these rights according to many human rights activists from around the world. A state ensures protection of its people enforced by law. They have more responsibility about a person's protection when they take them into custody in doubts of unlawful acts. Therefore, whenever a person dies in custody, it raises a major human rights issue. The Universal Declaration of Human Rights, 1948 stated in Article 5 that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment'.

## **WHAT IS A 'DEATH IN CUSTODY'**

A 'death in custody' is a generic term which refers to deaths of those in the custody of the State. A non-fatal shooting or severe and extensive injury is not sufficient; there must be a death. However, a death in a road traffic incident, even if the person who dies is under arrest and heading towards a police station in a police car, is not a death in custody. The deceased must have been 'in custody'. The following list illustrates some circumstances that may apply to this definition:

- whilst under arrest in a police station;
- whilst held as a prisoner in a prison or police station;
- whilst under arrest by a police officer;
- whilst being detained for the purposes of a search;
- whilst in other lawful detention e.g. immigration detention (but not where the victim is compulsorily detained under the Mental Health Act 1983 except where the person is still in police custody before being transferred to a medical facility);
- whilst a child or young person is in custody for their own protection;
- as a result of being shot by a police officer;
- if a person dies as a result of grossly negligent medical treatment by a police doctor whilst in custody, that is still a death in custody.

· A suicide can also be a death in custody, as can for example, a death following a fight between prisoners, if there is an indication that a prison or other officer or the prison has negligently failed to prevent the death

In short, Human rights are “rights and freedoms to which all humans are entitled”. These rights protect us from severe political, legal, and social abuses. A few examples of human rights are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured, the right to engage in political activity, and the right to life. All these rights are protected by law for the well being of a society. These rights, if violated, can lead to severe consequences or penalties if proved guilty to the sovereign authority.

#### **OBJECTIVES :**

The objectives of this paper is to examines the causes of deaths in custody, and considers what may be done to prevent these deaths, and to better protect the right to life, and other human rights, of vulnerable people held in the custody of the state.

#### **LIMITATIONS :**

Though the study reflects some of the incidences of custodial death around world, it is mainly focusing on custodial death in India and particularly under police and judicial custody.

#### **METHODOLOGY :**

Descriptive methods are applied for this study and secondary sources are collected from books, journal, articles, magazine and websites etc.

#### **DISCUSSION :**

Custodial deaths are perhaps one of the worst crimes in a civilized society governed by the Rule of Law. There are numerous cases where the police officers have misused their powers on the people and toyed with their lives. The police officers, who are regarded as the custodian and guardian of law, have acted in just

the contrary manner and have failed to protect the very basic right to life.

In Bangladesh, a huge battalion of Bangladesh Rifles (BDR) killed more than seventy army officers and others dead in February 25 and 26, 2009. After that, most soldiers of Bangladesh Rifles were held in prisons as suspects for the massacre. More than a thousand soldiers including twenty civilians were detained, and the others are still in the police custody. From a statement of the Bangladesh Rifles on April 23, 2009, it was said that "Sixteen detainees have died in custody - four from suicide, six from heart attacks, and six from other diseases."

In Vietnam, Human Rights Watch reported that they have received nineteen documents of brutality cases in twelve months till September 2010, which resulted in deaths of fifteen people. Deaths in custody were reported from major cities in Vietnam which has provoked the public protestant in the country and raised serious concerns.

In Afghanistan, a soldier named Jamal Nasser died in March 16, 2003 while in custody of the United States Army. After eighteen months of his death, it was reported that his death attributed to a kidney infection. Later on, investigations found that the cause was just a fiction. According to Senator Patrick Leahy, "The detainee, Jamal Naseer, died in March 2003, allegedly after weeks of torture by American soldiers.

In India, Article 21 of the Constitution guarantees the right of personal liberty and thereby prohibits any inhuman, cruel or degrading treatment to any person whether he is a national or a foreigner.

Article 14 enshrines right to equality and equal protection of laws. The Constitution recognizes it to be fundamental in the governance of the country that the State shall direct its policy to secure conditions of freedom and dignity and insulates against all forms of tyranny against mind and body and their freedom to grow fearlessly. All custodial safeguards in the constitutional and other laws are meant to protect human dignity and shun barbaric

approaches. This is why no person accused of any offence shall be compelled to be a witness against himself and a person is entitled to know why he is arrested.

In spite of several constitutional measures, custodial death in India is alarming. During 2001 – 2010 custodial death in India stood at 14,231. Maharashtra reported maximum number of custodial deaths in the country with a count of 250 cases of custodial death. Assam recorded 84 nos. of custodial death. However in 2012 Assam stood at the first position in the list. In recent years it is Maharashtra which recorded maximum custodial death.

#### **FACTS AND FINDINGS :**

- Poverty and Social Exclusion are closely associated with custodial crimes in police custody. The victims of custodial violence are people from poor and backward section of society with little political or financial power to back them. Personal enmity, caste and political consideration and at time pecuniary benefits becomes important consideration for custodial death rather than investigation of cases.
- The major reason for custodial crimes in police custody is torture and its relationships with police corruption and collusion with influential people in the society;
- The multi-dimensional consequences of custodial crimes are physical, psychological, economical, social, political and developmental;
- The weak institutional mechanisms and impunity to the guilty police officials are major factors for denial of justice to the victims;
- The civil society is reluctant to monitor custodial crimes in police custody due to fear & danger to life from police establishment.

#### **THE DETAIL OF REASONS CUSTODIAL DEATH IS BEING GIVEN BELOW.**

1. No proper search of arrested person is being taken before his entry in the lock-up of the police station and the arrested

persons have committed suicide in the lock-up by cutting their nerves, by hanging, taking poison or by burning themselves

2. No other method of interrogation is being adopted except using force. Police use torture in different forms such physical, psychological and chemical substances across the cases.

3. No preparation is being made beforehand for interrogation.

4. Involvement of such police officers of the same or other police station in interrogation who are not concerned with the arrest of the accused person and they use to cause more harm to accused persons because they are not involved in interrogation in writing.

5. No medical aid is given or examination of injured accused person is being got conducted immediately by the police and death occurs in police custody due to slackness of the police officers.

6. Lack of patience in police personnel because they want immediate confession of accused. They use force immediately if the accused person refuses to admit the guilt.

7. Lack of supervision during interrogation by the senior officers. The officers use to come at the police station after the death in police custody.

8. Traditional habit of using force by the police is prevailing in the department and it is proved by the fact that the police have used force not only with harden criminals but they have used force with those persons who have no previous criminal record and they died in police custody.

9. Death in police custody due to suicide committed by the accused in the lock-up as a result of misbehavior of police personnel with the arrested person

10. No respect for law and human rights of other persons and too much eagerness of being successful by adopting wrong methods of using force which results in custodial death.

#### **SUGGESTIONS :**

1. The police should be trained to use new scientific and parallel and psychological subjective techniques instead of using torture. Some of the measures in this connection are -

(a) Matching of finger prints found at the scene of crime with the finger prints of any suspected person in the crime.

(b) Matching of empty cartridges found at the scene of crime with the firearm of accused or suspected person in a crime of violence.

(c) Matching of recorded voice of any criminal with the voice of any suspected person in any case of kidnapping for ransom.

(d) Matching of DNA in a case of rape.

(e) Matching of hand writing of suspected accused person in any case of forgery.

(f) Connecting any person with the crime through the call details of his mobile phone which is called electronic surveillance.

(g) Matching of blood found at the spot with the blood found on the clothes of accused person.

It is said that if any police officer, conducting investigation, will keep the above mentioned point, in their mind, they can avoid the custodial death.

2. The working conditions of the police personnel should be improved and they should be provided with more promotional avenues on seniority basis.

3. The control of the Police should be brought under the Governor of the concerned State so that the police could work in a clean atmosphere free from political pressures.

4. A separate offence provision should be made by amending Section 302 of the Indian Penal Code regarding treatment of custodial death as murder.

5. The adequate medical facilities should be provided in jails so that in case of emergency proper and timely medical help could be provided to the persons in the jail custody.

6. A counsel should be allowed to be present during interrogation to check the custodial violence by investigating officer.

7. The scientific facilities/techniques to police personnel should be provided to use during interrogation. It will be more useful in stopping this heinous crime.

8. The arrest of accused during interrogation may be

considered justified in case of grave offences like murder, dacoity, robbery, rape etc., or when accused is likely to abscond and evade the process of law or when the accused is a habitual offender.

9. Section 114-B in the Indian Evidence Act, 1872 as recommended by the Law Commission in its 113th report, should be inserted to introduce a rebuttable presumption that injuries sustained by a person in police custody were caused by the police officer.

10. The compensation in case of custodial deaths should be a State responsibility. The State Government in turn can recover the amount of compensation from the offenders. For implementing this, a separate Tribunal/Board should be set up at the District level.

11. The most important requirement is to sanction a monthly pension to the dependants of the victim of custodial death because Government is liable for their miseries and sufferings.

#### CONCLUSION :

The increase in custodial crimes including torture in police custody has highlighted significance of human right research in countries like India. Despite India is a party of various International human rights including UN Convention against Torture and Cruel Inhuman Degrading Treatment or Punishment( CAT 1984), torture continue to be serious problem. Torture in police custody has been perceived a serious problem for individuals, next of kin or victim's families and communities at large.

#### REFERENCE :

1. The Protection of Human Rights Act, 1993. Act 10 of 1994, with Amendment Act, 2006. Springborn RR. Outlook: Death in custody. Department of Justice Criminal Justice Statistics Centre, California. May 2005.
2. Gill J, Koelmeyer TD. Death in Custody and Undiagnosed Central Neurocytoma. Am J Forensic Med Pathol 2009;30: 289-291
3. Torture in India 2010. Asian Centre for Human Rights, April 2010.p-5
4. Wobeser W, Datema J, Desjardis P, Bechara B, et al. Causes of death among

- people in custody in Ontario, 1990–1999. *Can Med Assoc J.* 2002; 167: 1109–1113.
5. National Human Rights Commission Annual report 2002- 2003.
  6. The Law Commission report(1995) as cited in M.J.Anthony (1997). *Landmark Judgements on Illegal Custody and police torture* New Delhi, Indian Social Institute,p1
  7. Death of Shibu - delay in the provision of timely medical aid: Kerala, Case No. 136/11/2000-2001-ACD, NHRC Annual Report 2002-03.p181.
  8. The Criminal Procedure Code, 1973. Act 2 of 1974. With Amendment Act 2005.



## Human Rights Violation in India

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### ABSTRACT :

Human rights are basic rights or the moral principles and freedoms inherent to all human behavior to live a life. Human rights are the legal laws which protect the human being. UDHR, The Universal Declaration of Human Rights is the foundation of the international system of protection for human rights. It was adopted by the United Nations General Assembly on December 10<sup>th</sup>, 1948. Human Rights is connected not only with the protection of individuals from the exercise of the state or governmental authority in certain areas of their lives, but that it is also directed towards the creation of societal conditions by the state in which individuals may develop to their fullest potential. India is indeed "incredible" in a way it treats its citizen particularly lower caste, women, and poor people. Discrimination, torture, injustice, is enough to substantiate India's failure to its human rights compliances. Indian government failed to protect and fulfill its obligation to its citizen. Slavers and human traffickers grossly violate human rights. Violation of Human Rights in India can be noticed mostly towards status of women and children. 11.4 million Women and girls are victims of forced labor in different forms – either in the form of physical, sexual, psychological and economic including debt bondage, trafficking and forced prostitution. *Violation: Any kind of violence against people is the violation of human rights. Violation of women rights is one of the most direct expressions of the power imbalance between men and women. Therefore, any attempt to assess the status*

and problem of women in a society should start from the social framework; social structure, cultural norms, and value systems are crucial determinants of women's role and their position in society. As global leaders seek to improve the status of women and girls, it's critical to focus on decreasing women and girls' exploitation in forced labor, trafficking and slavery.

## **INTRODUCTION :**

The phenomenon known as Human Rights is connected not only with the protection of individuals from the exercise of the state or governmental authority in certain areas of their lives, but that it is also directed towards the creation of societal conditions by the state in which individuals may develop to their fullest potential.

Human Rights are basic rights inherent or the moral principles and freedoms inherent to all are the foundation of the international system of protection for human rights. It was adopted by The United Nations General Assembly on December 10<sup>th</sup>, 1948. This day is celebrated as International Human Rights Day.

We are all equally entitled to human rights without any discrimination, sex, national or ethnic origin, color, religion, language or any other status.

Human Rights are those conditions opportunities of social life, which are indispensable for the dignity and the free development of human personality. Human Rights are universal. Human Rights are birth rights for all without any discrimination.

The common minimum human rights should necessarily cover the following basic provisions:

1. **Right to Security:** Security can be achieved primarily through efforts to meet the social, economic and cultural needs of the people. However, underdevelopment, poverty, lack of democratic participation and absence of mankind.

2. **Right to Development:** Growth with social justice should be the governing principle of all development schemes in developing countries. To maintain a dignified life, poverty, hunger and malnutrition must be eradicated from the world.

3. Right to Education: Education is the key instrument to create awareness and consciousness among the people about basic human right. It is important to adopt a special program for education of women and primary education should be free and compulsory for all.

4. Right to Work: Providing the guarantee of right to work all people without any discrimination of caste, color, sex, or religion. It is important to view of the widespread exploitation of workers and the gross violation of labor laws in the developing world.

5. Right to Religion and Cultural Freedom: In order to maintain secular character of society, it is essential to guarantee religious and cultural freedoms to the people irrespective of caste, color and creed. People should be able to pursue economic and social development and live with respect for their identity, traditions, forms, of social organization and cultural and religious values.

6. Right to Information: It is extremely important for all the people to have the adequate priority of information and communication to make the people aware about their fundamental freedoms and basic human rights. The absence of the right to information is widely held responsible for the widespread violation of basic human rights.

7. Right to Affirmative Action: it is essential to provide special safeguards to the vulnerable and weaker sections of the society in order to bring them in the mainstream of national life.

#### **OBJECTIVE :**

1. To motivate people against violation of human rights.
2. Educate women to be self dependent and to make them know about their rights.
3. To study the various dimensions of human rights violation among women such as crime against women and physical, mental and sexual violence faced by Women.
4. It is increasingly viewed that empowerment of women is an essential prerequisite for poverty alleviation and upholding human rights and for sustainable human development

#### **METHODOLOGY ;**

This seminar is based on secondary data collected from various books, web sites and in and around present situation of violation of women rights in India. This study is of descriptive in nature.

## **DISCUSSIONS :**

### **VIOLATION IN INDIA:**

'Women's rights are the edifice on which human rights stand' (Dr APJ Abdul Kalam).

India is indeed incredible in a way it treats its vulnerable citizen particularly lower caste and poor people. Discrimination, torture, enforced disappearance, injustice; cases of arbitrary detention are rampant and encourage substantiating India's failure to its human rights compliances. Signatory of various human rights instruments, Indian government failed to protect and fulfill its obligation not only to its citizen but also breached many international human rights law. India has failed to keep its human rights obligation particularly the right to freedom, torture and arbitrary arrest.

In addition, India is one of the founding signatories of UDHR (1948), Notable is the fact that signatory states (UN conventions) have legal obligations to promote and fulfill concerned human rights treaties.

India is a multiparty, federal, parliamentary democracy with a bicameral parliament. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women).The women in India very often have to face discrimination, injustice and dishonor. Though women in India have been given more rights as compared to men, even then the condition of women in India is miserable. However, women often denied of their right to freedom at form part of everyday life such as freedom of movement, access to education and participation in decision-making process.

There are many barriers to equality between the sexes. Important factors include gender stereotyping violence against women, social and cultural attitudes, and discriminating laws and practices. Women throughout the world live in constant fear and conditions of deprivation very often for their simple reason that they are women.

Violation of women rights is one of the most direct expressions of the power imbalance between men and women. Major changes that have occurred in the status of women in some parts of the world in recent decades, norms that restrict the women to the home are still powerful in India, defining activities that are deemed appropriate for women. They are, by and large, excluded from political life, which by its very nature takes place in a public forum. Women are under-represented in governance and decision-making positions. The Indian Constitution guarantees women equality before the law and the equal protection of laws under Article 14 and prohibits discrimination on grounds of sex under Article 15. Women rights violation in India included rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women remained serious problems. Child abuse and child marriage, trafficking in persons, including widespread bonded and forced labor of children and adults, child prostitution, and forced adult prostitution, are also considered as serious problems in India. While on the other hand the spread of social evils like dowry deaths, child marriage, domestic violence, rape, sexual harassment, exploitation of women workers are rampant in different parts of India. Humiliation, rape, kidnapping, molestation, dowry death, torture, wife-beating etc. have grown up over the years. The law also provides women with the right to police assistance, legal aid, shelter, and medical care. The Crimes Identified Under the Indian Penal Code (IPC) 1. Rape (Sec. 376 IPC) 2. Kidnapping & Abduction for different purposes (Sec. 363-373) 3. Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC) 4. Torture, both mental and physical (Sec. 498-A IPC) 5. Molestation (Sec. 354 IPC) 6. Sexual Harassment (Sec. 509 IPC) 7.

Importation of girls (up to 21 years of age). Inequality between men and women is common in India. This gender gap is mostly seen in five critical areas viz., economic participation, economic opportunity, political empowerment, access to education and reproductive healthcare as mentioned in the report of World Economic Forum (2005). It is increasingly viewed that empowerment of women is an essential prerequisite for poverty alleviation and upholding human rights and for sustainable human development. In India, men are always assumed to be superior to women and are given more preference. A girl is considered as a burden by parents and they preferred male child because they think only male child is able to earn for family and the sources of family income will increase. Since a girl child would be going to her husband's place upon marriage, the parents do not want to waste their resources on her upbringing.

Again the demand for large dowry and the huge wedding expenses caused a lot of hardship to the parents. So, the parents preferred a male child as they would be able to bring in large dowry. In rural areas it is seen that women are unaware about their rights, illiteracy is common in rural areas so most of the women has no idea regarding the schemes launched by government for protecting their rights, their skill development and welfare. So most of the rural women are engaged in unskilled work due to low education which ultimately increases disparity in rural areas.

#### **VIOLATION AGAINST WOMEN RIGHTS IN INDIA ARE IN SECTORS OF:**

- **Violation of Right to education:**

Right to Education is the basic fundamental human right. The position of women's education in India is in sensitive condition. Specially in rural India women are not aware even the value of education in fact they give more preference on their male child education. Due to large percentage of uneducated women in India, they are not even aware of their basic human rights and can never fight for them. Though female employment rate is high in rural areas, they were engaged mainly in unskilled job but in urban

areas due to better education were engaged in variety of jobs. Education especially female education is a major factor influencing health. It leads to better utilization of health care and greater community/ political participation.

- **Violation of Political Right:**

The political status of women in India is very unsatisfactory, particularly their representation in higher political institutions. In rural India specially among Muslim, they are not even permitted to go for their valuable vote though they are citizen of India. Their political Rights are denied and the representation of women in political participation is very low.

- **Violation of Right to Property:**

In most of the Indian families, women do not have own property in their own names and unable to share the parental property. Though, women have been given rights to inheritance, but the sons had an independent share in the ancestral property, while the daughter's shares were based on the share received by the father.

- **Violation of Right to Equal Opportunity For Employment and Right to Get Equal Wages for Equal Work:**

The law prohibits discrimination in the workplace, but employers paid women less than men for the same job, discriminated against women in employment is common problem in India. Indian labor market is adverse to women workers. It shows that, the role of women in large scale industries and technology based businesses is very limited. But even in the small- scale industries their participation is very low.

### **WOMEN EDUCATION AND EMPOWERMENT :**

In the field of educational research the most neglected area is female education in rural area. This work has examined the factors which stand as barriers in regard to education among rural women. The poverty of the parents, religion and problem of transportation to school as the major impediments of education among rural women. The status of women in India has been subject to many great changes over the past few millennia. From equal

status with men in ancient times through the medieval period, to the promotion of equal rights by many reformers, such as Fixing the minimum age of marriage of men and women by law was voiced as early as the mid-19th century by Ishwar Chandra Vidyasagar and Keshab Chandra Sen. Vidyasagar argued that early marriage was detrimental to the health of women, their efforts, coupled with that of Mahatma Gandhi, resulted in the passing of the Child Marriage Restraint Act, 1929, the history of women in India has been eventful. In modern India women have adorned high offices in India including that of the President (Pratibha Devisingh Patel), Prime Minister (Indira Gandhi), Speaker of the Lok Sabha (Meira Kumar).

The metamorphosis of a society depends not only on men but also on women. As such, the society should observe that women are getting facilities to pursue education as education is regarded as a vital tool for bringing about social change and development. In rural areas, girls are bound to engage in agricultural work leaving their schools. Another important point is the segregation of women from men in many aspects of social life, makes many parents unwilling to send their daughters to co-educational institutions. But with the passing of time because of the great social reformers, women of India also became eligible to pursue education. As time rolled on their claim to educational opportunities received greater attention in the recent time.

Education systems vary in administration, curriculum and personnel, but all have an influence on the students that they serve. As women have gained rights, formal education has become a symbol of progress and a step toward gender equity. In order for true gender equity to exist, a holistic approach needs to be taken. The discussion of girl power and women's education as solutions for eliminating violence against women and economic dependence on men can sometimes take dominance and result in the suppression of understanding how context, history and other factors affect women. Women education in India plays a very important role in the overall development of the country. It not only helps the

development of half of the human resources, but in improving the quality of life at home and outside. Educated women not only tend to promote education of their girl children, but also can provide better guidance to all children. Moreover educated women can also help in the reduction of infant mortality rate and growth of the population. Women empowerment is a global issue and discussion on women political right are at the fore front of many formal and informal campaigns worldwide. The concept of women empowerment was introduced at the international women conference at Nairobi in 1985. Education is milestone of women empowerment because it enables them to responds to the challenges, to confront their traditional role and change their life. So that we can't neglect the importance of education in reference to women empowerment India is poised to becoming superpower, a developed country by 2020.

#### **FINDINGS :**

1. Women are in a disadvantageous position in society both in absolute sense and relative to men in the area of access to education, employment and health care.
2. Women face violence inside and outside their family, as well as at the workplace.
3. Women are demanding to ensure education and health.
4. Women have become self dependent due to education.
5. Women are being engaged in income generation activities.
6. Self confidence has increased among women.
7. Participation of women in Gram Sabha and they are demanding to organize Gram Sabha regularly.
8. Women are getting elected in Panchayat election.

#### **CONCLUSIONS :**

Violence against women is perhaps the most shameful human rights violation. Women are the present and the future of India. But today in the world of the 21st century, women have attained a remarkable position in every field and their life style is improved, they are in no way inferior to men. Women have also started reaching out to state agencies for justice. There is no denying the fact that



the women of rural India have been confronted with some problems in pursuing education such as communication problem to and from the school, lack of aspiration of parents; absence of strong women organization and due to illiteracy of parents. Since agriculture is the primary occupation of rural people womenfolk are mainly engaged in domestic and agricultural work. Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child. National Policy for the Empowerment of Women, 2001: The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a "National Policy for the Empowerment of Women" in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women. Protection of Women from Domestic Violence Act, 2005: This Act protects women from any act/conduct/omission/commission that harms, injures or potential to harm is to be considered as domestic violence. It protects the women from physical, sexual, emotional, verbal, psychological, economic abuse. Protection of Women against Sexual Harassment at Workplace Bill, 2010: On November 4, 2010, the Government introduced protection of Women against Sexual Harassment at Workplace Bill, 2010, which aims at protecting the women at workplace not only to women employee but also to female clients, customer, students, and research scholars in colleges and universities patients in hospitals.

#### RECOMMENDATIONS :

> There is urgent need to create awareness especially in rural areas to disseminate information on legal safeguards, constitutional provisions, rights, which is provided by the Constitution of India for women. Women should be encouraged and support in their views in decision making process.

> Strengthening the women empowerment program which is helpful for women to participate in economic activities and for upgrading women's skills.

> A special emphasize must be given on education female child as she can stand in her own feet.

> There is need for more research and study on the status of women which can help in establishing a society based on gender equality.

> It is also necessary to take responsibility of society, family member, and stakeholder to mitigate violence against women.

> The women should be encouraged to organize themselves such as women's group, self- help group, N.G.O s etc. Some successful women's organizations can also act as catalytic agents for encouraging women's participation in social and political activities.

> The government should provide financial support and infrastructure to some of the successful women's organizations to take of the responsibility to safeguards the women's rights.

**REFERENCES:**

1. Agarwal, H.O, (2016) International Law and Human Rights.
2. Coomaraswamy, Radhika, (2005), „Human Security and Gender Violence , Economic and Political Weekly Vol. 40, No. 44/45 (Oct. 29 - Nov. 4, 2005).
3. Human Rights in 21<sup>st</sup> century, 2011.
4. Mathur, Deepa 1992: Women, Familyand Work, Rawat publications, Jaipur
5. Saikia, J.P., (2008), Problems of Education and Rural Women, DVS Publishers.
6. Serto, Manilei (2011), Women Education and Development, Maxford books.



## Human Rights Violations in Assam – A critical analysis

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### ABSTRACT :

Assam is the homeland of different ethnic groups. They were live in very peaceful atmosphere from historical period. But after independence the human rights situation in the Assam deteriorated rapidly after the Indian Army was deployed fight against secessionist insurgents. There have been numerous incidents of human rights violations in Assam during the past twenty or more years. In Assam peoples are tortured, maimed and killed by the Indian army, paramilitary forces, and the police on numerous occasions. The aim of the present paper is to show the human rights violations in Assam after independence.

*Key words: Human Rights, Violation, Assam*

### INTRODUCTION :

Human Rights Violation is the most serious problem of the modern world. In several country like Afghanistan, Pakistan, Serbia etc. the human rights is violated by the insurgents at a large scale. The human rights violation are also seen in several parts of the India. Assam and entire North-East India is a hot-bed of human rights violations. The human rights situation in the Assam deteriorated rapidly after the Indian Army was deployed in 1980 to fight secessionist insurgents. Since independence in 1947, North-eastern India has seen continuous armed uprisings and secessionist activities. Such activities spread to Assam in the late 1980's. in

particular, insurgent groups managed to increase their local support and to step up fundraising activities through extortion and intimidation of economically advanced groups. In 1990, Surender Paul, an influential member of the tea-producing groups was killed by insurgents. Soon after, the army was deployed to flush out the militants. Army operations began with Operation Bajrang, and have finally been given a more institutional framework under the unified command, from the beginning of 1997. (www.google.com)

#### **METHODS AND MATERIALS :**

The data for the present paper were collected from the different books and internet.

#### **DISCUSSION :**

The human rights violation in Assam was started since independence in 1947. Since independence some of the people of Assam were not satisfied to the independence. They called the independence as 'so called independence' and demanded separate independent country for entire North-East India. Some insurgency groups were formed for demanding the separate country in the Assam. In attempting to quash these movements, the Indian Government has launched several counter-insurgency campaigns over the years, but the people of Assam have suffered the severe by-products of this conflict, enduring widespread and consistent violation of their human rights. In 2007, the National Crime Records Bureau (NCRB) recorded a total of 6,844 crimes in Assam, which accounted for nearly 3.7 percent of all crimes in India. These crimes and violations take a variety of different forms.

#### **HUMAN RIGHTS VIOLATIONS BY THE SECURITY FORCES :**

To contain the insurgents and to diminish the support they enjoyed, especially in the rural areas, security forces have indulged in extrajudicial executions, custodial deaths, torture and rape. The Indian Army has conducted massive search operations in thousands of villages in Assam during which actions were taken against peoples that included civilians and young people of having militant

sympathies. As per the Assamese villagers having sympathy for militants groups, has claimed that they have been threatened, harassed, raped, assaulted, and killed by soldiers who attempt to fright them into identifying "suspected militants". The security operations, conducted under the Armed Forces Special Powers Act, 1958, which gives soldiers blanket immunity against any legal interference, have reduced the region to a killing field. Insurgency in the State of Assam rose in a political context, as has happened in the other adjoining states. But the government has chosen to view it solely as an internal-security problem in a border state, and has adopted policies to root out insurgency militarily. Not only has this approach failed to bear any fruit, it has also drastically aggravated the human rights situation.

The human rights in Assam was violated at a large scale during the six years long Assam Movement against the illegal immigrants of Bangladeshi.

#### **POLICE CORRUPTION AND BRUTALITY :**

Several allegations of human rights violation against the police of Assam have been noticed. Allegations included death in police custody, grievous hurt, molestation or rape, unauthorised detention or arrest, forceful deprivation of rightful ownership or possession of property of an individual, blackmail or extortion, accused of failing to register FIRs, and neglecting to conduct investigations into crimes and violations of human rights. In addition to the above violations, the disproportionate use of firearms by police officials, when handling protests by unarmed civilians, has been widely reported, resulting in the injuries and deaths of civilians who were simply exercising their fundamental right to peaceful protest.

#### **DISAPPEARANCE :**

There are times when individuals picked up by the security forces simply disappear. Police or militia deny having arrested them, and these civilians are never seen again, having been secretly abducted, imprisoned, or killed.

### **CUSTODIAL DEATHS AND VIOLATION OF PRISONERS' RIGHTS:**

The report submitted by the National Human Rights Commission (NHRC) clearly mentioned that between 2001 and 2010 almost 14,231 custodial deaths took place in India, out of which 84 of these cases took place in Assam. The data of the NHRC does not reflect the actual extent of custodial death in each state, as not all cases are reported to the NHRC, and, furthermore, these figures do not include the deaths that have taken place in the custody of the armed forces, as the NHRC does not have jurisdiction in these instances. Therefore, in reality, these numbers may be much greater. A large majority of the cases of custodial deaths take place as a result of torture. Many are glossed over by the authorities as cases of alleged suicide or alleged sudden medical complications.

### **VIOLATIONS AGAINST WOMEN :**

The report submitted by the National Crime Records Bureau (NCRB) shows that Assam is the most unsafe place for women in India. Most cases of violations against women involve rape, kidnapping and domestic violence. Women seem to suffer both at the hands of the perpetrators of such crimes, and of the police who fail to sufficiently aid victims. According to figures provided by the Assam Government in the State Assembly, for the period of April 2009 to January 2010, 125 women were murdered, 1430 were raped, 143 were subjected to dowry-related harassment, and the police registered 3801 domestic violence cases, as well as 40 cases related to the trafficking of women. These numbers give an indication of the widespread abuse women endure throughout the state. Further to the above violations, women in the state are also at risk of being victimised by so-called 'witch hunters', and there have been several cases of murder where women were killed on suspicion of being witches.

### **VIOLATIONS OF THE RIGHTS OF THE CHILD CHILDREN :**

The NCRB recorded 167 cases of crime against children during 2007, including 2 murders and 34 cases of rape. Assam is reportedly the largest source and transit point for the trafficking of women

and children, and police claim that each year at least 500 women and children disappear from and in the state. These individuals become sex workers in the brothels of West Bengal (70 percent of whom come from Assam), or 'domestic helpers' in Delhi (it is estimated there are at least 65,000 young girls from Assam who have been trafficked to the capital for this purpose), or they are forced to work at tea plantations, cotton farms etc.

#### **VIOLATION OF THE RIGHTS OF THE INDIGENOUS PEOPLE :**

Assam is the motherland of several indigenous peoples. These groups have contain certain human rights violations. Two forms of violation that indigenous peoples suffer from in particular are land alienation and displacement, and the non-implementation of affirmative action in employment. In 2006 alone, the NCRB reported 244 cases of crimes against Scheduled Tribes (STs) and 282 cases of crimes against Scheduled Castes (SCs) in Assam, including 26 murder cases, 34 cases of rape, and 24 cases of kidnapping and abduction perpetrated against STs, and 5 murder cases, 11 cases of rape, and 27 cases of kidnapping and abduction perpetrated against SCs.

#### **VIOLATION OF FREEDOM OF PRESS :**

Members of the press of Assam are less free than elsewhere in India. They are likely to face attack from both state and non-state agencies.

#### **CONCLUSION :**

Human Rights have been violated both by state and non-state agencies in the state of Assam. The situation continues to get worse. Even though the central government has set up the National Human Rights Commission, the NHRC does not have any power to investigate complaints against the Indian army, which is a major hindrance. Security forces continue operations in a manner which is at variance with both local laws and international norms.

The situation, especially the human rights conditions, are not well known outside the region. The national media, both

government and non-government controlled, have not given the region (Assam and the adjoining areas) the due coverage. In order to avoid a popular protest against the present policy by the more articulate urban population, the security operations have been confined mainly to the rural areas. The local media, which is more sensitive to the situation, have come under government attack. The groups involved in human rights activities too have come under repeated attacks.

**REFERENCE :**

[www.google.com](http://www.google.com)

[www.wikipedia.com](http://www.wikipedia.com)

SHRC: SOCIAL AUDIT REPORT

Agarwal, H.O. 2004: Human Rights. Central Law Publications, Allahbad.

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# **Human Rights and women: The global perspective and grassroot concerns**

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## **ABSTRACT :**

The world statistics tells us that women make up the majority of the world's poor; the majority of the world's illiterate, the majority of the world's dispossessed and that although possessing a genetic temperament to living longer, girls are much more likely than boys to die in the first five years of their lives. The statistics tell us that in almost every part of the world, women are traversed access to avenues of power and thereby to the decision-making structures which affect every aspect of their lives. The paper throws light on global as well as national human right issues relating to women folk on the basis of available secondary data. As a grassroot analysis, this research takes up 200 Self-Help Groups consisting of more than 80 percent women members and tries to assess rights, awareness level about their rights and different other issues relating to human right of the group members. It is revealed that members are quite reinvigorated, energetic and interested to share their feelings and experience of participation in decision making and new thrill of earning income, but, surprisingly, it was found that the increase in income is more prominent in case of male members. The result of the statistical test shows that even if the number of male members is very small, their effective engagement in income generating activities is more result oriented than the female members.

## **INTRODUCTORY STATEMENT :**

All human beings are born free and equal in dignity and rights...

By 1993, the international community (i.e: all countries of the world) had agreed to the following:

The human rights of women and girl-children are an inalienable, integral and indivisible part of human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels and the eradication of all forms of discrimination on the grounds of sex are priority objectives of the international community.

Sustainable human development means expanding all people's choices and creating the conditions for equality so that they may realize their full potential. This goal is unrealizable if all human rights — economic, social, cultural, civil and political — are not promoted, preserved and defended. The world statistics tells us that women make up the majority of the world's poor; the majority of the world's illiterate, the majority of the world's dispossessed and that although possessing a genetic temperament to living longer, girls are much more likely than boys to die in the first five years of their lives. The statistics tell us that in almost every part of the world, women are traversed access to avenues of power and thereby to the decision-making structures which affect every aspect of their lives. The issue of gender-based violence was the rallying point for women all around the world to push for recognition of their rights. Until a decade or so ago, violence against women was not taken seriously as an issue of human rights. It was too politically sensitive, too culturally specific, too controversial, too difficult to deal with. The Charter of the United Nations, 1945: The first international agreement affirming the principle of equality between women and men. This principle, leading to the empowerment of women, continues to be a central feature of the UN's efforts to address social, economic and political challenges across the globe. The UN has been promoting the participation of women as equal partners with men in achieving sustainable development, **rights** **peace, security, and full respect for human**

### **OBJECTIVES OF THE STUDY :**

The paper is intended to throw light on global as well as national human right issues relating to women folk on the basis of available secondary data. Secondly, as a grass root analysis this paper tries to assess rights, awareness level about their rights and different other issues i.e independent decision making, house bearing, raising voice in family and public domain etc. relating to human right of the rural women folk.

### **METHODOLOGY OF THE STUDY :**

The prevailing scenario is analyzed with the help of available secondary data. For the grass root analysis 200 Self help groups have been selected from Dibrugarh district, keeping in view the fact that Dibrugarh district is having the largest number of women self help groups. These 200 groups are selected on the basis of the fact that at least 80 percent of the member of each group must be female. A pre designed, well structured questionnaire has taken to collect the information from female group members. Three (3) females from each SHG have been randomly selected as sample on which the schedule has run and information is collected. Altogether the sample size becomes 600 female SHG members from 200 different SHGs.

### **THE PREVAILING SCENARIO :**

#### **EMPOWERING LEGISLATIONS IN THE LAST 61 YEARS :**

- The right to inherit property came in 1956 through legislation.
- Hindu Succession (Amendment) Bill ensures a equal rights for Hindu women to inherit property.
- Several legislations are in force to prevent sexual harassment of women at work place.
- The 73rd and 74th Constitutional Amendments in 1993 — provides women one third of the elected seats in local self government institutions— a definite impact on the participation of women in the democratic process.
- The Protection of Women from Domestic Violence Act, 2005 includes in its ambit, not only women in marriage and live-in

relationships but also those living in a shared household related by 'consanguinity or adoption'.

#### **POLICIES & STATUTES AIMED AT "GENDER MAINSTREAMING:**

- The National Commission for women was constituted (1992) to safeguard women's rights.

- The National Health policy to give highest priority to programs relating to women's health.

- Special programs in the education sector to help increase women's literacy and reduce the gender gap in the school system.

- The central government's policy of gender budgeting incorporated in India's national budget 2005 – 06 specifying that 30% of funds must go to women related sectors.

In 1995 the Beijing Conference prepared a groundbreaking framework for achieving equality between women and men. As a result of such legislations and initiatives, women have broken barriers and Indian women have excelled in every field.

#### **THE INDIAN PARADOX :**

Today India has:

- The world's largest number of professionally qualified women.

- The largest population of working women in the world.

- More women doctors, surgeons, scientists, professors than the United States.

But behind the facade of "India Shining" and in spite of all legislations, traditional patriarchal norms continue to shape women's destiny...

May you be the mother of hundred sons....A common Hindu wedding blessing.

Norms for appropriate female behaviour that had been fixed between the years 150 to 200 B.C. still continues. Manu, the ancient law giver had laid down that,... "by a young girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house". "In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons;

a woman must never be independent.”

Most women work harder than men, but their work is hardly recognized as they are mainly engaged in unskilled work. Neither household chores, nor her work in the field is ever counted as a work. The UN report states that woman perform on an average 20% more work than men, even though they comprise only 51% of the world's population. Rural women, who are engaged in regular work, get 30 % lower wages than men. In Andhra Pradesh a woman works around 15 hours a day during the agricultural season whereas a male on an average works for around 7-8 hours. While women in the United States and Europe often measure sex discrimination by pay scales and seats in corporate board rooms, women in the Third World gauge discrimination by mortality rates and poverty levels. The female mortality rate in India is among highest in the world. India's maternal mortality: 385 to 487 per 1 lakh live births, 2nd highest in the world. Pregnancy related death/year: 1.25 lakhs, 80% of them anemic.

#### **MALNUTRITION AND THE FEMINIZATION OF POVERTY :**

- Generally women are the ones who eat last in the family and in most cases their food intake does not contain the optimum nutritional value that is required for maintaining a healthy body.
- Nutritional deficiency leaves women not only anemic but incapable of achieving their full growth, resulting in an unending cycle of undergrowth. Malnourished women cannot give birth to a healthy baby.
- A woman's visits to a doctor are infrequent since women are not free to move out of the house on their own and need permission from a male member of the family.

#### **ANALYSIS OF THE FIELD STUDY :**

Several different efforts have been made in recent years to develop comprehensive frameworks delineating the various dimensions along which women's right can be protected. Osmani (1999) measures empowerment through the degree of autonomy to which women can live their lives, ability to control decision making

within the family and measures the relative access to household resources, such as food, education, healthcare, etc. He analyzes women's empowerment through the ability to exercise control over their lives, control over their labor, freedom to move and interact, access to leadership positions and control over reproduction. He measures the changes in the lives of individual women after getting micro credit, increase in income, new skills gained, mobility, status in the family and visibility in the community and work load. Although methodologies and variables differ slightly, there is a high level of agreement among studies on the key elements of empowerment.<sup>1</sup> Decision making can be regarded as an outcome of mental processes (cognitive process) leading to the selection of a course of action among several alternatives. Each decision making process produces an output that can be an action, an opinion or a choice. This is in fact what the empowerment looks for: giving more autonomy in their own life by encouraging the power of their opinions.

Questions have been asked to 600 sample women SHG members on how they are involved in the group decision making process and if they ask permission from their family members on various issues such as mobility, household and awareness. This aspect is inquiring into the participant's ideas and expectations for the future. In fact, their visions of different issues project their view of certain social conditions, good or bad. It is through those conceptions that it is possible to establish their will to become more empowered. Questions have been asked to the participants on how they would prefer things to happen in their and other women's lives (including their daughters). The questions address issues on children, food, heritage, house chores, violence, dowry, caste etc.

The results at the individual level of the sample female group members are like this- 94 percent of female members think that men should participate in the housework if the woman works outside the home. They need support in household chores when they are busy in group activities. 80 percent of them considered that husband should participate equally in household activities. 96

percent women think that it is ok for a woman to ask for help from her husband if she feels she has too much housework to manage, even if she doesn't have an outside job. 67 percent of them would like to have more help from their husband in the house/children. 38 percent of them have asked their husband for help with the household and/or children after joining the groups.

83 percent members can speak their opinions freely to their husband's family after joining the group activities. 70 percent of women have husband's support in going out for group activities. 78 percent have cast their vote in the last election. 84 percent females are quite confident in saying that their position in the family changed since they joined the SHG. At the group level, about 69 percent of SHG members are capable of dealing with bank officials, panchayat leaders etc.

This aspect researches especially the economic possibilities of the women. If a woman has control over her family income, the ability to make decisions in favor of themselves increases, so will her empowerment level. A range of questions were asked about women's control over the productive process, for example, women were asked what activity they invested in, where the inputs and productive assets came from and who procured them, what they cost, how they were put to use, where outputs were marketed, for what price, what were the problems involved in the productive process, who the main user of the loan was in terms of labor input, and in terms of controlling accounts and general management.

On the basis of these questions we found the following results, as follows:

When they are asked about the use of the income from SHG- 33 percent of women developed a habit of saving their income; 45 percent purchased some household necessities; 4 percent gave it to husband/ family members and the rest spent it in some other purposes like purchasing gifts, travelling etc. The female group members accepted (59%) that when they are going to start any productive activity, even if in the group level, they discussed and took necessary suggestive measures from their husband/ father.

These 59 percent had a belief that male members possess a strong sense of possible business risks and gains.

One of the very early changes with the origination of the micro credit system is in the mobility of women. "A woman's place is in the home"- only 11 percent of the sample female members agree with this statement. 76 percent are confident that a woman is capable of looking after herself outside the home. However, 77 percent need permission from their husband/family when going out to some place within their native village. If their husband or family, without a good reason, does not allow them to go out 90 percent of them attempt to discuss it or convince them that they should be allowed to. Only 17 percent female member's husbands inform them of where he is going. 21 percent members need permission to go to SHG and 32 percent need permission to go to their parent's house.

#### **EPILOGUE :**

This study shows that indeed the SHG movement is affecting the social dynamics by protecting women's rights as never before. Local women are now helping their family financially, sharing effectively in the domestic economic responsibilities. More importantly, the change in women status, empowered by the SHG movement is changing the social dynamics. Across the surveyed district, women overwhelmingly conveyed positive feelings and effects in many areas as a result of participation in the SHGs. In the two districts,

(a) The members indicated learning valuable skills and information to help manage their businesses, such as separating business and personal expenses, budgeting, record maintenance, dealing with officials, marketing skills and

(b) Women reported that they participated in decision-making, along with their husbands, on how money is spent.

The SHGs had major impact on social and economic life of women. The study revealed an increase in social recognition of self, status of family in the society, size of social circle and

involvement in intra family and entrepreneurial decision making. There was an increase in self confidence; self reliance and independence of rural women due to the participation in the entrepreneurial and other activities of SHGs.

**BIBLIOGRAPHY :**

Afkhami, Mahnaz. (1995). Faith and freedom: Women's human rights in the Muslim world.

Syracuse: Syracuse University Press.

Benhabib, Seyla. (1995). Cultural complexity, moral interdependence, and the global dialogical community. In Women, culture, und development: A study of human capabilities, eds. Martha Nussbaum and Jonathan Glover. Oxford: Clarendon Press.

Covenant for the new millennium: The Beijing declaration and platform for action. 1995.

From the Report of the fourth world conference on women.

U.N. Doc. A/CONF.177/20. Santa Rosa, CA: Freehand Books.

Das, Veena. (1994). Cultural rights and the definition of community. In The rights of subordinated peoples, eds. Oliver Mendelsohn and Upendra Baxi. Delhi: Oxford University Press.

Osmani, Lufun N Khan (1999). Impact of Credit on the Relative Well-Being of Women: Evidence from the Grameen Bank.

Parpart, Jane L., and Marianne H. Marchand. (1995). Exploding the canon: An introduction/conclusion. In Feminism, postmodernism, and devepment. See Marchand and Parpart 1995.

Pateman, Carole. (1989). Feminist critiques of the public/private dichotomy. In The disorder of women : Democracy, feminism, and political theory. Stanford: Stanford University Press.

Toubia, Nahid. (1995). Femak genital mutilation: A call for global action. New York:

Women, Inc. United Nations. (1948). Universal Declaration of Human Rights. G.A. Res. 217A(III), U.N. Doc. A/RES/10. Adopted December 10, 1948.

**NOTES :**

- 1 Osmani, Lufun N Khan (1999). Impact of Credit on the Relative Well-Being of Women: Evidence from the Grameen Bank.

## **Human Rights Law in India : Impact and Implementation**

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### ***ABSTRACT :***

India, being the largest democracy in the world, is a host to numerous legislations. The objectives laid down in the Preamble to the Constitution of India, envisages the nation to be a land wherein Justice, Liberty and Equality prevails. Therefore, the protection and promotion of Human Rights as an implied goal is reflected here. However, the manner in which the Protection of Human Rights Act, 1993, popularly known as POHRA, was enacted makes one doubt the sincerity of the then Government of India in respecting and protecting human rights since it was created because of global criticism of India's attitude towards human rights violations in the country. Under its ambit, the National Human Rights Commission and State Human Rights Commissions were constituted which are responsible for monitoring and preparing reports on any situations of human rights violation in the country and States, respectively, among other functions.

The requisite human rights for an individual have been enshrined as Fundamental Right in the Constitution of India. The Act of 1993 further solidifies the commitment to the same. It is found that this Act has been created on the lines of various International Covenants and Human Rights Conventions which have been signed by India. The enactment of this Act is unquestionably a step in the right direction. However, a mild review of the past two decades since its conception exhibit how far India has yet to travel

to qualify as a successful nation in the protection and promotion of human rights.

“To deny people their human rights is to challenge their very humanity.”-  
Nelson Mandela, Former President of South Africa

### INTRODUCTION :

Article 1 of the Universal Declaration of Human Rights (UDHR), 1948 provides that “All human beings are born free and equal in dignity and rights.”<sup>1</sup> The cornerstone of the concept of human rights in the present day world is the idea imbibed in this very provision which affirms that every person is entitled to certain fundamental rights and dignity of their person by virtue of being a human. These rights are inherent, universal, indivisible and inalienable. The United Nations Organization (UNO), since its creation in 1945, has been the umbrella under which the nations of the world have gathered to protect and promote human rights. Although the UDHR is not a treaty in itself and hence, not legally binding, it was explicitly adopted for the purpose of defining the terms ‘fundamental freedoms’ and ‘human rights’ which occur in the United Nations Charter (UNC).<sup>2</sup> Thus, by virtue of being member states, all the 193 nations under the aegis of the UNO are in agreement with the provisions of the UDHR although most of them were not amongst the original 58 member states who signed the Declaration in 1948.

India was one of the original members of the United Nations Organization and since then has been in agreement with several of the UNO’s international treaties for the protection and promotion of human rights. However, as international law is not always binding in nature and there are limitations as to penalizing an errant nation or individual, the situation of human rights violations in India continue to be grim. Thus, the question arises as to what provisions the Government of India has enacted to protect these fundamental freedoms of the people and how far they have been successful.

### **HISTORICAL BACKGROUND OF HUMAN RIGHTS IN INDIA :**

The concern for human rights became particularly pronounced in the twentieth century, although its roots can be traced back to time immemorial. With the establishment of the League of Nations in 1920, the forerunner of the UNO, after the First World War, the concept of protection of human rights by the States became more pronounced although there was no explicit mention of the term. The Covenant of the League of Nations existed to protect the rights of two specific groups of people, viz. the minorities and persons inhabiting the colonies of the defeated powers.<sup>3</sup> However, the failure of the League's commitments was evident in the fact that the Second World War began in 1939. The horrors of this war eventually gave birth to the United Nations Organization.

In India, the freedom of thought and speech, the freedom of one's life in the light of one's beliefs, the freedom of association, the freedom of public debate between the contending philosophical schools were taken to be the natural foundations of human relationships. The Indian philosophy characterizes the foundation of human rights in the ancient conception of Dharma and Danda which regulated the governance of State and its citizens. It was the duty of the King to uphold the law and he was as much subject to law as any other person (equality before law and equal protection of law can be deduced from this practice). The legendary King Asoka in the post-Kalinga regime had sown the seeds of a humanitarian society. Asoka's policy of tolerance bears a close resemblance to the concept of civil liberties. He desired that all animate beings have security, self-control, peace of mind and joyousness; inhuman treatment or torture of prisoners were prohibited in Asoka's regime. King Akbar's (1526-1605 A.D.) religious policy Din-e-Ilahi (divine religion) which preached the ideas of religious tolerance, the Bhakti and Sufi Movements medieval India have all contributed towards eliminating irreligious practices of the contemporary society and thereby, propagated basic human rights.<sup>4</sup>

In British-ruled India, certain educated Indians like Raja Ram Mohan Roy did seek to bring about social reformation by demanding

abolition of the Sati system, female infanticide, caste system and also initiated a movement for widow remarriage and female education. Establishment of the Brahmo Samaj (1828) and Arya Samaj (1875) lent further support these causes. Influenced by the reformist movements in different parts of the world for the cause of freedom, the Nehru Committee Report (1928) of the Indian National Congress, who was then fighting for political freedom of the country, the first commitment to civil liberties and the Karachi Resolution (1930), the most important commitment to individual and group rights were prepared. These were later included in the Constitution of free India as Fundamental Rights in Part III, and as Directive Principles of State Policy in Part IV, respectively.<sup>5</sup>

#### **HUMAN RIGHTS AND THE CONSTITUTION OF INDIA :**

India became independent on August 15, 1947 in accordance with the Independence of India Act, 1947 and along with Pakistan, acquired a new international personality.<sup>6</sup> The Preamble of the Constitution declares India to be a "Sovereign, Socialist, Secular, Democratic, Republic".<sup>7</sup> The term 'democratic' denotes that India is a country which has a people elected Government and it gets its authority from the people. Therefore, it is the people in whom legal, as well as political sovereignty is vested and all people have equal rights in the said matter. To fulfill the objectives of the Preamble, Fundamental Rights (Part III) and Directive Principles of State Policy (Part IV) were laid down.

Human rights arise from natural law and are mostly demarcated as being of two kinds, viz. civil and political rights, and economic, social and cultural rights. The former are the civil liberties that imply a claim to freedom from interference with that claim and are termed as 'first generation' human rights. They impose a negative duty on the State not to violate that claim. They are state-enforced rights e.g. right to fair trial, right of the accused to silence, etc.<sup>8</sup> The latter are related to the guarantee of minimum necessities of life to a human being e.g. right to adequate food, right to work, etc. and are called 'second generation' human rights.

In addition, there is another set of rights which may be enjoyed by individuals collectively such as right to development, right to a protected environment, etc. and are termed as 'third generation' of human rights. Most of these rights have been incorporated in Parts III and IV of the Constitution of India.<sup>9</sup>

The Fundamental Rights (FR) enumerated in Articles 14 to 35 of the Constitution of India are justiciable, i.e. enforceable by courts in India, whereas, the Directive Principles of State Policy (DPSP) imbibed in Articles 37 to 51 are non-justiciable. The former includes right to equality and equal protection under the law, freedom of speech, expression, freedom of movement, right to reside in any part of the country, freedom of association and to assemble peaceably, right to business, occupation, trade or profession, right to life and personal liberty, right to free and compulsory education for children, freedom of religion, educational and cultural rights for minorities and right to constitutional remedies, amongst others. The DPSP, on the other hand, are certain directives to the various states in the nation to be kept in purview while enacting welfare legislations. They include right to free legal aid, equal pay for equal work, right to work and the like. A few rights, like right to a pollution free environment although not explicitly enumerated in the Constitution, have received recognition under the ambit of Article 21 (right to life) as held by various judgements of the Supreme Court of India. An example is that of the case of State of Punjab v. Mohinder Singh Chawla<sup>10</sup> wherein it was held that right to life includes the right to health.

#### **THE PROTECTION OF HUMAN RIGHTS ACT, 1993 :**

The United Nations Educational Scientific and Cultural Organization (UNESCO) mooted the idea of the creation of an impartial institution for the protection of human rights in the States as early as 1946. Realizing the importance of such an institution or commission, the World Conference on Human Rights in 1993 urged Governments to strengthen national structures and institutions of society, which play a role in promoting and safeguarding human

rights. The Vienna Declaration and Programme of Action adopted by the World Conference prompted a number of States to establish such institutions. The Western countries, United States of America in particular, criticized India on the violation of human rights by Indian armed forces and paramilitary forces, especially, in the State of Jammu and Kashmir. In the early 1990's India felt the need for establishing a commission as a positive response to the criticisms of the foreign Governments in the context of political unrest and violence in Punjab, Jammu and Kashmir, the North-East and Andhra Pradesh.<sup>11</sup>

Under Article 253<sup>12</sup> of the Constitution of India, the Parliament has been empowered to make any law for the whole or any part of the country to give effect to international agreements. The Human Rights Commission Bill introduced in the Lok Sabha on May 14, 1992 was referred to the Standing Committee on Home Affairs of the Parliament. The President of India promulgated an Ordinance, which established a National Commission on Human Rights on September 27, 1993, owing to pressure from foreign countries as well as from the domestic front. Thereafter, a Bill on Human Rights was passed in the Lok Sabha on December 18, 1993 to replace the ordinance promulgated by the President. The Bill became an Act, having received the assent of the President, on January 8, 1994 (Act 10 of 1994) and was published in the Gazette of India, Extraordinary Part II, Section I, on January 10, 1994.<sup>13</sup>

Section 2(d) of the Act<sup>14</sup> 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.

The most defining feature of the Act is the mandate for creation of the National Human Rights Commission (NHRC) at the Centre and State Human Rights Commissions (SHRC) in all the states. As per Section 3 of the Act, the Commission shall consist of five members, three of whom should be from the judiciary and two "from amongst persons having knowledge of, or practical experience in, matters relating to human rights." Selection of chairperson and



members of the Commission is made on the recommendations of a committee consisting of the Prime Minister, Home Minister, Speaker and leader of the opposition in the House of the People and Deputy Chairman and leader of opposition in the Council of States.<sup>15</sup>

The NHRC is an autonomous body and is required to perform a number of functions which include<sup>16</sup> inquiring, suo moto or on a petition presented to it by a victim or any person on his behalf into a complaint of human rights violation, abatement or negligence in the prevention of such a violation by a public servant, intervene in any Court proceeding regarding any such violation with prior approval of the Court, review safeguards under the Constitution or any existing law for protection of human rights and recommend measures for their effective implementation, review factors that inhibit enjoyment of human rights, study international treaties and other instruments and make recommendations, spread human rights literacy and the like. The Commission has also been granted the powers of a civil Court trying a suit under the Code of Civil Procedure, 1908 while inquiring into complaints. It is also empowered to utilize the services of any officer or investigating agency of the either the Central or State Government in the course of its investigation and after adequate inquiry, if human rights violation is affirmed, may recommend to the concerned Government or authority the initiation of prosecution proceedings or such other action as the Commission may deem fit, or, interim relief to the victim, or, approach the Supreme Court or High Court concerned for appropriate action.

The SHRCs perform the functions equivalent to that of the NHRC at the state level.

The Act also provides for establishment of Human Rights Courts in every district for speedy trial of offences arising out of violations of human rights. However, this direction to the state governments is not mandatory.

#### **EFFECTIVENESS OF THE EXISTING HUMAN RIGHTS LAWS:**

The Fundamental Rights, being justiciable, have been accorded due recognition whenever situation has arisen by various

judgements of the Courts in India. Right to life, as provided for under Article 21 of the Constitution deserves a special mention since the judges, by widening its horizon, has provided immense relief to the people of the country whenever there was a lack of enumerated human rights. For e.g. the right of an under-trial prisoner to be released on being kept in prison beyond the maximum prison term awardable on conviction was recognized under Article 21 in the case of *Hussainara v. Home Secretary, State of Bihar*.<sup>17</sup> The DPSP have also been kept in purview to a certain extent while enacting welfare legislations such as the Maternity Benefit Act, 1961, the National Rural Employment Guarantee Act, 2005, etc. However, the main area of focus has to be on the functioning of the NHRC and SHRCs since they are being entrusted with the job of protecting and promoting human rights in India.

The National Human Rights Commission has earned considerable prestige and reputation by its suo motu action. In fact it's very first action, related to the Bijbehara incident in Jammu and Kashmir in which there were press reports of death of about 60 civilians as a result of firing by the security forces, was issuance of a suo moto notice to the Government of India, seeking a report on the incident In the first meeting of the Commission held on November 1, 1993. Upon investigation, it recommended disciplinary proceedings against 14 members of the security force, prosecution after a magisterial enquiry, payment of compensation and review of the circumstances and conditions of deployment of security forces.<sup>18</sup> There has been an upsurge in the registration of complaints over the years which stood at 1,07,655 in NHRC's annual report of 2012-2013<sup>19</sup> compared to 56,462 in 2002-2003.<sup>20</sup> However, the Act itself contains certain drawbacks which hold the NHRC and SHRCs back in adequately protecting human rights.

The Act does not authorize the commission to enquire into complaints of violations of human rights committed by the members of the armed forces. "Armed Forces", as defined in Section 2(1)(a) of the Act, means not only the naval, military and air forces but also the central para-military forces. Since a very large number of complaints of human rights violations are directed against the

members of the "armed forces", the Act obviously weakens the NHRC's effectiveness in providing redress to the public in such cases. All that the Commission, under Section 19 of the Act can do is to call for reports from the Central Government in such cases and then make recommendations to the Government or not "proceed with the complaint" at all.<sup>21</sup>

Under the Act, the Commission has no power to enforce its decisions. According to Section 18<sup>22</sup> of the Act, where the enquiry conducted by the Commission discloses violation of human rights, it can only advise the government to take action against guilty persons or grant relief to the victim. If any Government refuses to accept the advice, there is no provision in law which empowers the Commission to force the Government to implement its advice.

The Commission (N.H.R.C.) does not have powers of prosecution. It does not provide any remedy other than what has already been provided under the Constitution by way of fundamental rights. The enquiry made by the Commission is not always impartial in view of the fact that it is not equipped with an independent investigative agency. The investigative wing of the Commission is not at all effective. Yet another point to be noted here is the narrow definition of human rights given under the Act. It limits human rights to only the rights relating to "life, liberty, equality and dignity of the individual guaranteed by the Constitution." This definitely limits the scope of the Commission to ensure the observance of human rights.<sup>23</sup>

The objective of establishment of human rights courts in each district and their adequate functioning has also not been achieved. As recently as in July 2015, the Supreme Court of India had to raise the issue that except for the state of Sikkim no state has complied with the provisions of the Act of 1993 to set up human rights courts in each district.<sup>24</sup> Chief Justice of India had raised his concern regarding the same on International Human Rights Day

last year. He had observed that there were a number of deficiencies in the protection of Human Rights Act, 1993 which needs to be looked into.<sup>25</sup>

**CONCLUSION :**


The protection and promotion of human rights is rightly one of the fundamental concerns in India. In the absence of these basic rights, no country or civilization can expect to grow and prosper. The Constitution of India has provided legitimacy and justiciability to several of the basic human rights. Yet, their violations continue and as observed, it is mostly in the hands of the Government which affirms to protect them. The enactment of the Protection of the Human Rights Act, 1993 was definitely a step in the right direction. However, there is a need for giving the NHRC and SHRCs powers beyond mere inquiry and making recommendations. The issue of the "Armed Forces" not being under the purview of the Commission akin to other government agencies is another worrisome factor given their records in States like Jammu and Kashmir and North-East India. The NHRC cannot be branded as being completely ineffective since its record of work says otherwise. But, there is definitely a need to revisit the POHRA, 1993 to make adequate changes so that India can move forward and become a pioneer nation in the protection and promotion of human rights.

**REFERENCES :**

1. DR. BHANWAR LAL HARSH, HUMAN RIGHTS LAW IN INDIA: PROTECTION AND IMPLEMENTATION OF THE HUMAN RIGHTS ACT, 1993 (1st ed. 2008).
2. DR. H.O. AGARWAL, HUMAN RIGHTS (14th ed. 2013).
3. DR. S.K. KAPOOR, INTERNATIONAL LAW & HUMAN RIGHTS (16th ed. 2012).
4. DR. S.S. DHAKTODE, HUMAN RIGHTS & INDIAN CONSTITUTION: DR. B.R. AMBEDKAR'S ENDURING LEGACIES (3rd ed. 2015).
5. P.M. BAKSHI, THE CONSTITUTION OF INDIA (12th ed. 2013).

**NOTES :**

1. Universal Declaration of Human Rights, art.1, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).
2. Jaime Ora óOraá, The Universal Declaration of Human Rights, in INTERNATIONAL PROTECTION OF HUMAN RIGHTS:

- ACHIEVEMENTS AND CHALLENGES 76, 73-134 (Felipe Gómez Isa, Koen de Feyter ed., 2006).
3. DR. BHANWAR LAL HARSH, HUMAN RIGHTS LAW IN INDIA: PROTECTION AND IMPLEMENTATION OF THE HUMAN RIGHTS ACT, 1993 29 (1st ed. 2008).
  4. Id. at 32-34.
  5. Id. at 35.
  6. DR. H.O. AGARWAL, HUMAN RIGHTS 268 (14th ed. 2013).
  7. P.M. BAKSHI, THE CONSTITUTION OF INDIA 1 (12th ed. 2013).
  8. DR. S.S. DHAKTODE, HUMAN RIGHTS & INDIAN CONSTITUTION: DR. B.R. AMBEDKAR'S ENDURING LEGACIES 8-9 (3rd ed. 2015).
  9. AGARWAL, supra 6, at 4-6.
  10. AIR 1997 SC 1225 (India).
  11. Chapter IV-The Protection Of Human Rights Act, 1993 and the National Human Rights Commission, SHODHGANGA 96 (Dec. 09, 2016, 08.00 PM), [http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/12/12\\_chapter%204.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/6653/12/12_chapter%204.pdf).
  12. BAKSHI, supra note 7, at 251.
  13. Supra note 11, at 98.
  14. The Protection of Human Rights Act, 1993, No. 10, Acts of Parliament, 1994 (India).  
[http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/national\\_human\\_rights\\_commission.pdf](http://www.humanrightsinitiative.org/programs/aj/police/papers/gpj/national_human_rights_commission.pdf).
  15. G.P. Joshi, National Human Rights Commission- Need for Review, HUMAN RIGHTS INITIATIVE 2 (Dec. 09, 2016, 10.01 PM),  
Supra note 14.
  16. AIR 1979 SC 1369 (India).
  17. Supra note 13, at 116-117.
  18. Annual Report 2012-2013, NATIONAL HUMAN RIGHTS COMMISSION 231 (Dec. 09, 2016, 11.00 PM),  
[http://nhrc.nic.in/Documents/AR/NHRC\\_FINAL\\_English\\_Annual\\_Report\\_2012\\_2013.pdf](http://nhrc.nic.in/Documents/AR/NHRC_FINAL_English_Annual_Report_2012_2013.pdf).
  19. Annual Report 2002-2003, NATIONAL HUMAN RIGHTS COMMISSION 168 (Dec. 09, 2016, 11.05 PM), <http://nhrc.nic.in/Documents/AR/AR02-03ENG.pdf>.
  20. Joshi, supra note 15, at 3-4.
  21. Supra note 16.
  22. ~~Supra note 16.~~
- 

24. Amit Anand Choudhary, Set up human rights court in each district: SC, TOI, July 26, 2015.
25. Special Human Rights Courts should be set up in each district to address the human rights issues; CJI Thakur [Updated], LIVE LAW.IN (Dec. 09, 2016, 11.35 PM), <http://www.livelaw.in/special-human-rights-court-should-be-set-up-in-each-district-to-address-the-human-rights-issues/>.



## Role of State in Protecting Human Rights with Special Reference to Right to Health

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### **ABSTRACT :**

Human rights are commonly understood as inalienable and fundamental rights to which a person is inherently entitled simply because she or he is a human being. The right to health is a fundamental part of our human rights and of our understanding of a life in dignity. The right to the enjoyment of the highest attainable standard of physical and mental health, to give it its full name, is not new and without which it is nearly impossible to enjoy other human rights.

States have the primary obligation to protect and promote human rights. It is the responsibility of the state to assure enjoyment of right to health for public by making available adequate quantity of public health facilities. As realization of this obligation is totally dependent upon the financial resources available to a state, the argument of paucity or lack of financial resources can be taken by any state for not fulfilling the obligation. Health facilities, goods and services must be physically accessible and economically affordable to everyone without discrimination.

Human rights are interdependent, indivisible and interrelated. This means that violating the right to health may often impair the enjoyment of other human rights, such as the rights to education or work, and vice versa. The economic development of a country is very much dependent on medical care and health facilities

provided to its citizen. The emerging dimension of this right to health has made it more debatable, a matter of attention and concern. This paper sought to analyse the availability of infrastructure and health service facilities and the gap in implementation. Besides, it should also help the stakeholders gain an insight, enabling them to gain a fairly good and comprehensive idea, knowledge and information.

### **INTRODUCTION :**

Human beings are rational beings and by virtue of their being human possess certain basic and inalienable rights which are commonly known as human rights. The right to health is a fundamental part of our human rights and of our understanding of a life in dignity. The right to the enjoyment of the highest attainable standard of physical and mental health, to give it its full name, is not new and without which it is nearly impossible to enjoy other human rights. The concept of a right to health has been enumerated in international agreements which include the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of Persons with Disabilities. However, there remains some international variation in the interpretation and application of the right to health due to considerations such as how health is defined, what minimum entitlements are encompassed in a right to health, and institutions which are responsible for ensuring a right to health.

The International Community became concerned about right to health only after the completion of Second World War. The United Nations has taken many initiatives to promote higher standard of living to find solutions of social health. The creation of World Health Organization (WHO), The United Nations Children's Fund (UNICEF) and adoption of Universal Declaration of Human Rights (UDHR) has taken right to health to another level. India's commitment towards fulfillment of right to health can be understood from various constitutional provisions, government policies and schemes for realizing it. In spite of having legal norms internationally and

in the domestic front the term 'right to health' sounds vague in reality. The vulnerable section of the society is still not aware of health rights and policies available to them. The need of the hour is to identify the gap between policies of the government and implementations and the role of the state in realizing it.

### **THE ROLE OF STATE IN PROTECTING RIGHT TO HEALTH: AN INTERNATIONAL PERSPECTIVE :**

Only after the holocaust of two World Wars the International Community understood the importance of right to health. The United Nation is committed to promote higher standard of living, to find solutions of social health and to concern itself with the health related matters across the globe.<sup>1</sup> The focus on right to health was proved by international community by creating the World Health Organization in the year 1948 with the objective of patronizing and supporting health programs, formulating health policies and promoting health education at the international level. The United Nations Children's Fund (UNICEF) was created in 1946 with a view to provide some essential facilities as vaccines, nutritional supplements and emergency shelters to people in need and also humanitarian assistance to vulnerable section.

The Universal Declaration of Human Rights, which has been adopted in the year 1948, assures vide Article 25(1) that everyone has the right to standard of living adequate for health and wellbeing of himself, and of his family, including medical, sickness and disability.<sup>2</sup> Unlike the UDHR the International Covenant on Economic Social and Cultural Rights (ICESCR) is legally binding on all states that through ratification or accession become parties to it. Under article 12 of the ICESCR all States Parties should recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.<sup>3</sup> The Alma Ata Declaration in 1978 is in consonance with UDHR and WHO'S Constitution. In fact, at Alma Ata (now Almati in Kaazakistan) International Conference on 'primary healthcare' expressed the need for 'urgent action by all governments, all health and development workers, and the world

community to protect and promote the health for all the people of the world'.<sup>4</sup>The importance of Alma Ata declaration lies in its affirmations that health is state of complete physical, mental and social well being, and not merely the absence of disease or infirmity, is a fundamental human rights and the attainment of the highest possible level of health is a most important worldwide social goal whose realization requires the action of many other social and economic sectors in addition to the health sector.

The link between health and human rights can be established by the following criteria:

1. Human Rights are said to be universal, indivisible, interrelated, interdependent and right to health is considered to be part and parcel of human rights, therefore it requires equal importance from the stakeholders

2. If a state is not maintaining minimum standard of health to its people, they will not be able to enjoy other human rights provided to it as it is interrelated.

3. A country's socio-economic growth more or less depends on the health status of the country.

#### **INDIAN PERSPECTIVE IN RIGHT TO HEALTH :**

"Let everyone be happy, let everyone be free from ills, let all realize what is good and may none be subjected to misery'

The Holy Rig Veda Indian civilization and rich cultural heritage is known to everyone. The advanced public sanitation system in Harappa and Mohenjo-Daro Civilization is a glaring example of maintenance of good public health in ancient India. The knowledge of Ayurveda demonstrates the significance of health in the ancient India. The Constitution of India address the issues of public health through fundamental rights (indirectly) and Directive Principles of State Policy (directly). According to article 39(e) of the Constitution of India states shall direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited

to their age or strength. Under article 41 of the Constitution the state has been directed within the limits to its economic capacity and development to make effective provisions for securing public assistance in cases of old age, sickness and disablement.<sup>5</sup> Article 42 demands that the state shall make provision for securing just and human conditions of work and for maternity relief<sup>6</sup>. Under article 47 of the constitution the state is directed to take the task of improving the public health, as its primary duty and to bring about the prohibition of the intoxicating drinks and drugs which are injurious to health<sup>7</sup>. Public health cannot be maintained without having a pollution free environment and regarding this the Constitution has directed the state under Article 48A to protect and improve the environment<sup>8</sup>. A fundamental duty to protect and improve the natural environment is provided under Article 51A(g)<sup>9</sup>.

It is interesting to note that right to health under Constitution of India is not a fundamental right rather a directive principle of state policy which renders it unenforceable in the courts. But the government of India is under obligation to protect and maintain minimum standard of public health as India is party to many of the International legislation and directions to the state provided under directive principles of state policy. Judicial activism in India is playing a greater role in shaping the contours of the right to health within article 21<sup>10</sup> through judicial decisions. The Supreme Court in the famous case of *Municipal Council, Ratlam vs. Vardichand*<sup>11</sup> directed the state to realize that Article 47 principle of governance makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties.

The Supreme Court in *Consumer Education and Research Centre vs. Union of India*<sup>12</sup> reading Article 21 in conjunction with Articles 39(e), 41 and 43, concluded that right to health and medical care is a fundamental right in India. The judiciary never left the opportunity to expand the scope of Article 21 to include right to health in number of cases despite the fact that the question of deciding whether Article 21 includes right to health was not directly involved.

### **AN ANALYSIS OF PRESENT HEALTH FACILITIES IN INDIA :**

The health status of the people in the country is an important flag-post to evaluate the success of the state policy. Health of the individual impacts the growth of the nation in a very material sense. Financing of health care is one of the key factors in delivery of health care. Total health care expenditure is about 4 percent of GDP and the government does run a large public health care services system. The *National Rural Health Mission* is the main vehicle of strengthening the health system, now with integration of the *National Urban Health Mission*- renamed as the *National Health Mission*. More than 8.96 lakh *Accredited Social Health Activists* (ASHA) are in place across the country and serve as facilitator, mobilizers and providers of community level care.

Though health is a state subject, it was that a central push-both in financing and ideas was needed to break the logjam and get states moving onto strengthening their health system<sup>13</sup>.

### **NATIONAL HEALTH POLICY :**

In reassessing the role of government in promoting public health, a look at the aims and objectives of the new *National Health Policy 2015* is essential. The primary aim of the new National Health Policy draft is to inform, clarify, strengthen and prioritize the role of the government in shaping health systems in all its dimensions by following certain key principles including equity, universality and inclusive partnership. Improved governance mechanisms and a legal framework for creating and enabling environment for providing accessibility to health services should be important components of an effective health policy.<sup>14</sup> According to National Health Policy the most important strength and the same time challenge of governance in health is the distribution of responsibility and accountability between the centre and state.

### **HEALTH CARE SYSTEM IN INDIA :**

India's population relies mostly on private care which is perceived to be more responsive and attentive to consumer needs, relative to the public sector. Private sector involvement is also

important, since increased public-private provider competition for funds could end up making both responsive to regulatory guidelines. In that case accountability to patients could also be improved, by making continued funding a function of quality of service and patient satisfaction.

A longstanding criticism of the government run health facilities in India is their poor responsiveness to patient needs. Unlike private sector facilities, which can use funding that they receive to modernize facilities and even to provide incentives to motivate their personnel, the public sector is hampered by its administrative and financial structures. A primary care can play a key role in preventing more severe health outcomes. In our country the primary and hospital care is not up to the mark as a result people ignore it, visits big private hospitals completely bypassing health care services at the primary level. According to the Ministry of Health and Family Welfare (MOHFW), even in 2010, there were shortages of 50 percent – 70 percent of physicians and various specialists, lab technicians and radiographers at community health centers<sup>15</sup> Basic amenities like water and electricity supply is not up to the mark.

#### **INFANT MORTALITY RATE (IMR): INDIA'S FUTURE :**

Infant mortality which is defined as the probability of dying before the first birthday is a good indicator of overall health situation of a particular society. As per the Sample registration system 2011, the *Infant Mortality Rate* for the country is 44 per 1000 live births.<sup>16</sup> Going by the MDG-4 targets, India was to reduce the IMR to 28 per 1000 live births but as things stands today, only six states- Tamil Nadu, Kerala, Maharashtra, West Bengal, Punjab and Himachal Pradesh have met the target.<sup>17</sup> The leading causes of infant mortality are asphyxia, pneumonia, pre-term birth complications, diarrhea, malaria, measles and malnutrition. The universal implementation of the full package of labour and delivery interventions, starting with skilled attendance at birth is very essential to reduce IMR.

### **HEALTH SERVICES IN RURAL INDIA :**

Rural India is home to 68 percent of India's total population, and half of them live below the poverty line- struggling for better and easy access to health care and services. Each year close to 37 million people fall below poverty line due to high expenditure on health services they have to incur. Even after completion of 11 years of NRHM the health centers of remote and far-flung areas run without health professionals and updated facilities. By placing ASHA workers in every village, basic health care has been brought closer to the vulnerable groups by giving a boosts to Health Education and Promotion. Health issues confronted by rural Indians are many and diverse ranging from severe malaria to uncontrolled diabetes from a badly infected wound to cancer.

### **HEALTH CARE SERVICES FOR TRIBAL :**

It fascinating that tribal in India constitutes 104.28 million, as per 2011 census, which is about 8.61% of the total population of India.<sup>18</sup> The poor and worst health status of primitive tribe is because of their isolation, remoteness and being largely unaffected by the developmental process going on in India. Public health services to tribal population are one of the weakest links, due to lack of awareness among the tribal population and health care human resource willing to work in scheduled areas. There is a shortage- vacancy, absenteeism or half heartedness of doctors, nurses, technicians and managers in public health care system in scheduled areas.<sup>19</sup>

### **CONCLUSION :**

"Health is wealth" may be an outdated quoted dictum. But a Nation with a healthy population is more capable to contribute in the socio- economic growth of the country achieving its development goals. The right to enjoyment of the highest attainable standard of physical and mental health is an important part of human rights enshrined under many of the international legislations along with the DPSP (Directive Principle of State Policy) of the Constitution of India. The development of multiple variables of health requires

multi-level interventions that involve/encompass areas such as food and nutrition, education, drinking water and sanitation, housing, employment, industrial and occupational benefits, and welfare including social protection, family and community services, tribal affairs and communications. Healthcare infrastructure is as important as physical infrastructure for the development of human resource. Therefore the government of India has to increase the public expenditure on healthcare services as in developed countries in the world.

**NOTES:**

1. "Right to health: International and Indian Perspective" by Subir K. Bhatnagar, Economic Social & Cultural Rights, Vol.1, Subhram Rajkhowa, Stuti Deka,ESB Publishers(India) Guwahati, p193
2. See Ian Brownlie, (ed.) Basic Documents on Human Rights, (3<sup>rd</sup> ed., 1994) p.26 for the text of the document.
3. Ibid, p114 for the text of the document
4. "Health for All: A Critical International Perspective" by Subhas Sharma, Yojana, February 2016 p31
5. The state shall make provisions for securing just and humane conditions of work and for maternity relief.
6. See Constitution of India, article 42
7. Ibid see article 47.
8. Ibid article 48A.
9. Ibid article 51A(g)
10. Right to life and personal liberty
11. AIR 1980 SC1622
12. AIR 1987 SC990
13. "Health Sector in India: Perspective and Way Forward" by T Sundararaman, Yojana, February 2016, p9
14. "Evolution of National Health Policy in India" by J V R Prasad Rao ,Yojana, February 2016, p15.
15. Achieving Universal Coverage in India: Resource Use and Policy Considerations" by Ajay Mahal, Yojana, February 2014, p14
16. India 2014 Publication Division Ministry of Information and

- Broadcasting Government of India 58<sup>th</sup> Ed.,2014, p 407
17. "Steps to Correct Infant Mortality Rate" by Aarti Dhar, Kurukshetra, Ministry of Rural Development, Vol. 63,July 2015, p14
  18. "Need for New Health Care Service for Tribal" by P. Srivastava, Kurukshetra, July 2015, p 25
  19. "Health Care in Tribal Areas: Present and the Future" by Abhay Bang, Yojana, February 2016



## **Human Rights for Whom? State and Ex-Militants in India**

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### **ABSTRACT :**

Whenever concept like human rights is studied, two questions crop up – why human rights and human rights for whom? This work will try to answer the latter question. Attempt here will be made to problematise the very concept of human rights by studying the conditions of ex-militant and questioning whether ideas of ‘human right’ can be applied towards them or not which many a times takes the name of ‘amnesty’. Thereby this paper will try to study the policies taken by the Indian state vis-à-vis these ex-militants in certain states of India.

Militant Insurgency has been on the cards for quite some time now both in Jammu & Kashmir and Assam. The situation worsens with tremendous amount of power vested with the armies of both the states and in this confrontation between security forces and banned militant groups such as ULFA and JKLF had taken many innocent lives. Time and again the state governments of both the states, with the cooperation of the central govt., had initiated surrender and rehabilitation schemes of these militants. The present paper tries to analyse these surrender policies of both the states – the loopholes in it and the pros and cons of such initiatives. This paper is significant as many scholarly works have been devoted to insurgency and counter-insurgency issues but the aftermath of militant life is mostly ignored which needs sufficient attention.

**Key Words:** *SULFA, JKLF, Surrender, Rehabilitation, Amnesty, Conflict, Deprivation.*

## **INTRODUCTION :**

India arguably can be regarded as the world's most multi ethnic polity. Even being characterized by a vast spread of cultural diversity and heterogeneity, the social mosaic of India isn't that chaotic. India has followed a principle of "unity in diversity". This unity is based on democracy, federalism, tolerance and secular character of the state. Many societies have sought to hide their diversities and refuse to accept their heterogeneity and have paid a high price. Indian federalism also needs to be eulogized in this context. Federalism in India provided institutional solution to intra-societal conflicts and tensions in pluralistic and multi-cultural societies. While it strengthens national coherence, it tried to accommodate and protect diversities within societies. Unlike the USSR Indian federation has been able to hold its various units together. Fifty years ago Selig Harrison (1960) warned that India's "fissiparous tendencies", particularly its linguistic differences, would soon lead to Balkanization or dictatorship. Today such worries seem distant though not improbable. India's successful attempt at nation-building often is threatened by disturbances in Jammu & Kashmir and the North-East. Problem of insurgency in these areas and demands of secessionism have been haunting policy makers from years. Increasing conflict in these sensitive zones of the Indian sub-continent made the Indian state to impose extraordinary laws (like AFSPA) in these areas. As fallout of this, there had been many instances when innocent people have become victims of this confrontation between army and militants. However, many of these militants have laid down their guns both in North-East and in Jammu & Kashmir. The present paper will try to critically analyze the various surrender and rehabilitation policies for the erstwhile militants initiated by respective state governments in co-ordination with the Central govt. The focus here will be on the surrendered militants in J&K (basically from JKLF) and Assam (or SULFA as they are popularly called).

Such policies of rehabilitation of ex-militants can also be linked to the larger idea of providing amnesty which is very often understood and dealt with internationally. Hence it would be beneficial at this point to understand the concept of amnesty and laws associated with it.

#### **AMNESTY - UNDERSTANDING THE CONCEPT :**

The term 'amnesty' has been defined variously. According to Oxford English Dictionary, amnesty implies an act of oblivion, a general overlooking or pardon of past offences.' While Black's Law dictionary has defined it as 'a sovereign act of forgiveness for past acts, granted by a government to all persons (or to certain classes of persons) who have been guilty of crime or delict, generally political offences – treason, sedition, rebellion, draft evasion – and often conditioned upon their return to obedience and duty within a prescribed time' (Freeman, 2009). However, in the international realm the meaning attached to amnesty has witnessed a sea change. Louis Joinet has highlighted this change. In 1983, 'UN Sub-Commission on Prevention of Discrimination and Protection of Minorities' maintained that amnesty laws are important 'for the safeguard and promotion of human rights and fundamental Freedoms'. However, it had changed its stance soon after as in 1991 amnesty was equated with providing impunity rather than safeguarding basic freedoms (Freeman 2009, pp. 1-2). Facilities of amnesty can be provided with for different reasons and in different contexts. They can be given to correct past crimes and injustices; some given during the conflict and some after the conflict; some amnesty provisions are derived from certain laws pertaining to the same while some amnesty provisions spring from executive orders; some are conditional and some are not and so on (Freeman 2009, pp. 12-13). At this juncture it is pertinent to study the surrender and rehabilitation policies of Assam and Jammu & Kashmir to understand the dynamics of it.

#### **SURRENDER POLICY IN ASSAM :**

The surrender ceremony of Surrendered United Liberation

Front of Assam (SULFA) in Assam was held in two phases – first during the tenure of Hiteshwar Saikia in 1992 and second during the chief ministership of Prafulla Kumar Mahanta in 1998. The first scheme known as the ‘100% Special Margin Money Scheme for Rehabilitation of ULFA Surrenderees’ was formulated and brought into effect from June 1, 1992 initially for a period of three years. As per the scheme a surrenderer is eligible to get a bank loan up to a limit of Rs 1, 50 lakh and margin money amount up to a limit of Rs 50,000 to be provided by the State Government. The total value of the scheme would be Rs 2.00 lakh. After discussions with RBI and lead bank officials, the State Government took the decision to provide guarantee in respect of loans advanced by the banks/financial institutions following which the RBI issued a circular clearly instructing the banks to scrutinize the loan applications independently and satisfy themselves about the viability of the projects before sanctioning the loans under the 100% Special Margin Money Scheme. Many surrendered militants were also absorbed in Grade III and Grade IV jobs subject to fulfilling the minimum requirements. As a result of this, about 3000 ULFA cadres laid down their guns in 1992. The second rehabilitation Scheme was introduced during Prafulla Kumar Mahanta’s second tenure under which militants were encouraged to surrender with their arms for which they were paid compensation depending on the type of arm they surrender. Once surrendered, the militants were taken to rehabilitation camps for training in trade and vocation for 12 months during which they were provided free food and lodging and a monthly stipend of Rs 2,000 per month. Involvement of NGOs for running the training courses was also a feature of the scheme. The Centre agreed to provide 100% reimbursement of fund.

The enquiry to make at this point is that how many has actually benefited from this scheme. Though some ex-militants have no doubt had taken maximum advantage of these rehabilitation policies (specially militants of top ranks). They had amassed great wealth which made K. P. S. Gill (2000) remarked that such policies are ‘ill-conceived and counter-productive’. In tune with this

argument, D. N. Bezbaruah, the former editor of Sentinel, described the surrender package as 'perverted' which did nothing but created a Frankenstein monster in the form of SULFA (Sahni & Routray, 2002). Apart from this, there had also been cases of fake surrenders as some of the surenderees didn't have any police cases registered against them (Choudhury, 2012).

But such rehabilitation facilities didn't reach most of them and utter poverty compelled many of them to commit suicide (Ray, 2011). The worst sufferers in this case are the women. Women in this context are discriminated from many angles. Getting the tag of an ex-militant in a patriarchal society makes life more miserable for them. They have to bear the brunt of social stigma which is gender biased (Ahmed, 2013). Apart from that, they are not even taken into consideration in these schemes of the government and are forced to lead a life of poverty, neglect and social exclusion unnoticed by the media.

#### **SURRENDER POLICY IN J & K :**

In Jammu and Kashmir, this process was initiated in 1994 at the heights of militancy, whereby ex-militants were given a fixed deposit for 3 years of an amount of Rs.3 lakh and monthly relief of Rs.3000. The rehabilitation scheme for surrendered militants underwent further changes in 2005. The Government made changes in the Scheme applicable to all the states of the NE region and J&K. It said that surrender must accompany weapons. The surrendered militants would receive vocational and trade training for a period of three years during which they would receive a stipend of Rs 2,000 per month. After observing their good behaviour for three years they would be paid a lump sum grant of Rs 1.50 lakh for starting own venture. Further, J&K govt. in 2010 approved the much awaited 'Rehabilitation Policy' paving way for the return of youth who had crossed over to Pakistan administered Kashmir. The prerequisite for getting benefit of the policy would, however, be 'change of heart'. Under the policy, parents of the youth who had crossed over to Pakistan or PoK can approach the Superintendent of Police

of their district certifying that their ward wanted to return and live a normal life. The parents will receive orders from the SP only after the case is scrutinized by all the intelligence agencies operating in the state, the sources said. The case will also be forwarded to the high level committee to be constituted in this regard by the government for final approval; sources said adding that the committee will scrutinize cases which receive clearance from the intelligence agencies. Such youth will be kept in a camp where they would be monitored and imparted counseling so that they could earn their livelihood, the sources said. In the meantime, if someone arrived with their wife and children, they would also be provided with emergency certificate. For those youth, who do not have any relation, the surrender application can be filed before the Indian High Commission in Pakistan. Government is also contemplating to provide online information and application form under the policy. In 2010, this issue had been raised and taken over by the then Chief Minister of Jammu & Kashmir Omar Abdullah who espoused for rehabilitation of these surrendered and released militants and directed the Director General of Police K Rajendra to prepare a "comprehensive plan" for rehabilitation of surrendered and released militants, so that they are integrated into the mainstream of the society of the state.

After the announcement of this scheme in 2010, 268 fighters had laid down their arms (till 2014). But most of the ex militants alleged that the Rehabilitation policy announced by the J & K govt. was not able to meet their ends and most of them still lead their lives in utter despair and poverty. They claim the Rehabilitation Policy to be over hyped and a political ploy on the part of the state govt. (Khalid, 2014). Sobhna Sonpar (2007) while making a case study of ex-militants of JKLF stated that it is because of humiliation and victimization that these people take this violent route but they face the same as they struggle to lead their lives as civilians. Apart from this most of them suffered from severe psychological distress and post-traumatic stress disorder (Sonpar, 2008).

### THE PRESENT SCENARIO :

In this context, it will be beneficial to mention the sensational report of John Stevens, commissioner of the Metropolitan Police Service in UK submitted in 2003 which talks about collusion between security forces and renegade militants in Northern Ireland which often led to death of the latter. Apart from this he also highlighted important issues such as 'willful failure to keep records, the absence of accountability, withholding of evidence' and so on (Noorani, 2003). The scenario had prevailed in Assam and more so in Kashmir where many ex-militants (which many a times play the role of an informant) had laid their lives as a result of fights between them and the banned militant groups of the respective state. Though the trend has declined in the present time but it had gained momentum in the late 90s and the early 2000s.

In Assam, during the stint of Assam Gana Parishad's rule from 1996, many SULFA members were used to provide whereabouts of their erstwhile ULFA partners. Attack of SULFA members by ULFA was a common scenario then (Gokhale, 2001). But it has often been alleged that even the SULFA members retaliated and had a hand in attacking family members of ULFA members, known as 'secret killings' and this practice grabbed headlines in 2001 when AGP was voted out of power and some of their prominent members were accused of the same (Rahman, 2008). At that point of time, many SULFA members were engaged in cases of extortion, imposed their control on coal and transport syndicates, use of muscle power and so on. SULFA members were accused of the murder of Parag Kumar Das, then Executive Editor of the local daily Asomiya Pratidin and a human rights activist (Sahni & Routray, 2002). They were allowed to carry arms for their protection which was very often misused. Many also reaped a good harvest of the government contracts that were offered to them. There was tremendous pressure on the government to curb their growing power (Gogoi, 2001). In the present time, there are two sections of SULFA members that exist in Assam one section became very affluent and were the ones who got real benefit from their act of surrendering. Most of them became big

contractors and the prominent trend is the entry of most of them in politics. The other section, the deprived ones are mostly involved in self-employment and some are running NGOs.

Though in Assam the confrontation between security forces and ex-militants has somehow declined but same is still prevalent in Jammu and Kashmir – the recent attack being in September 2015 (Ehsan, 2015). Many ex-militants had been attacked by unidentified gunmen and Sopore town has been the hub of such activities (Qayoom, 2015). The security forces also humiliate them which often take the form of torture, periods of custody without charges being framed, and intimidation. Sad enough no substantive action has been taken against this so far.

### **CONCLUSION :**

Time and again scholars have been trying to figure out the significance of such rehabilitation policies to ex-militants and one reason some talk about is the importance of 're-humanisation' of them as they can play an important part in post-conflict reconstruction of the society by bringing about social stability (Sonpar, 2007). As far as the rehabilitation policies are concerned many suggest the need of a cohesive surrender and rehabilitation policy rather than various ad-hoc policies (Kumar, 2010). Good education, promotion of ethnic art, handicraft and tourism, opening up employment avenues are various ways through which the youth of these states can be driven away from the lure of terrorism and can also open avenues for induction of ex-militants to lead a stable life (Kumar 2010, p. 10).

At this point question arises that how can one ascertain the fact that the surrendered militants really had a 'change of heart' which made them to surrender both their arms and their violent/radical ideology. One can in this context pose question to the very surrender and rehabilitation policies of these governments despite the fact that they have gunned down many. The perennial problem for the Indian state is whether to welcome them or impose stringent law on them for their past activities. Infact, some might use this

surrender policy of the govt. to lead a luxurious life – join them, surrender and then take benefit of these policies. Question here is are the various surrender policies of the Indian state good incentive for laying down guns for other militants or they in a way escalate militancy. But, one should also take into account the possibility that some surrendered militants might want to lead a normal life and the question here to ask is that are the various rehabilitation policy helping them in any way. Adding to this, the attempts of these two governments to offer attractive financial packages to the former militants and to employ them might pose serious problems to the economy of these two states which is already reeling under severe economic crisis and unemployment. This is a very complicated issue which needs sufficient discussion and debate.

#### REFERENCES:

##### *Primary Sources:*

'Scheme for Surrender-cum-Rehabilitation of militants in the North East', *Govt. of Assam*, 1992 (Accessed on 3rd December 2016, <http://www.satp.org/India/Documents/Scheme/20for/20surrender/20of/20militants.htm>)

'Scheme for Surrender-cum-Rehabilitation of militants in the North East', *Govt. of Assam*, 1998 (Accessed on 3rd December 2016, <http://www.satp.org/satporgtp/countries/india/states/assam/documents/papers/Surrender.htm>)

Revised Scheme for Surrender-Cum Rehabilitation of Militants in the North East', *Ministry of Home Affairs, Govt. of India*, 10.05.2005. (Accessed on 7th December, 2016, <http://mha.nic.in/pdfs/NE-III-Revised-Scheme300909.pdf>)

Rehabilitation Policy', *Govt. of Jammu & Kashmir, Home Department*, (31.01.2004) (Accessed on 5th December 2016, <http://jma.nic.in/pdfs/JK-RehabilitationPolicy.pdf>)

##### *Secondary Sources:*

Ahmed, Farhana. "Gender inequality: Ex-ULFA female cadres living in difficult conditions in Lakhimpur, Assam, India." *World Pulse*, July 11, 2013 (Accessed on: 7th December, 2016 <https://www.worldpulse.com/en/community/users/farhana-ahmed/posts/27342>)

- Choudhury, R. Dutta. "Fake surrender of ultras rampant in State." *The Assam Tribune*, February 06, 2012 (Accessed on: 6<sup>th</sup> December 2016, <http://www.assamtribune.com/scripts/mdetails.asp?id=feb0612/at06>)
- Ehsan, Mir. "J&K: Three-year-old boy injured in attack on ex-militant father dies in Sopore." *Indian Express*, September 20, 2015. (Accessed on 5<sup>th</sup> December 2016, <http://indianexpress.com/article/india/india-others/sringara-3-year-old-succumbs-to-bullet-injuries/>)
- Freeman, Mark. *Necessary Evils – Amnesties and the Search for Justice*. USA: Cambridge University Press, 2009.
- Gogoi, Nitin. "Assam government under pressure to disarm SULFA." January 6, 2001 (Accessed on 6<sup>th</sup> December 2016, <http://www.rediff.com/news/2001/jan/06assam.htm>)
- Gill, K.P.S. "Uncertain Wisdom of Policy Makers," *Pioneer*, New Delhi, (December, 2000)
- Gokhale, Nitin. "14 SULFA Killed, 10 Injured." *Outlook*, June 21, 2001. (Accessed on 5<sup>th</sup> December 2016, <http://www.outlookindia.com/article/14-sulfa-killed-10-injured/212205>)
- Harrison, Selig S. *India: The Most Dangerous Decades*. UK: Princeton University Press, 1960
- Khalid, Wasim. "Life for Kashmir's former fighters 'ruined'." *Aljazeera*, July 03, 2014 (Accessed on 4<sup>th</sup> December 2016, <http://www.aljazeera.com/indepth/features/2014/06/kashmir-former-fighters-regret-homecoming-201462214440675226.html>)
- Kumar, Narendra. "Jammu and Kashmir: The Emerging Contours and the Way Ahead" *Manekshaw Paper, Centre for Land Warfare Studies*, No. 21, 2010.
- Misra, Udayon. "ULFA: Beginning of the End." *Economic and Political Weekly* 44, no. 52 (December 26, 2009-January 1, 2010): 13-16
- Noorani, A. G. "Collusion of Security Forces with Renegade Militants: The Stevens Report." *Economic and Political Weekly* 38, no. 24 (June 2003): 2344-2345
- Nath, Sunil. "The Surrendered Insurgents of Assam." *Himal South Asian* 14, no. 12, (December, 2003): 20-23.
- Qayoom, Sheikh. "Latest Kashmir killings trigger panic among ex-militants." June 16, 2015 (Accessed on 4<sup>th</sup> December 2016,

<http://ummid.com/news/2015/June/16.06.2015/kahsmir-killing-for-ex-militants.html>)

Rahman, Mirza Zulfiqur. "Secret Killings, Open Truths?" *Mainstream* 46, no. 11 (March, 2008): 3-4 (Accessed on 7<sup>th</sup> December 2016, <http://www.mainstreamweekly.net/article550.html>)

Ray, Sanjoy. "3000-odd SULFA men in State in dire straits." *The Assam Tribune*, November 27, 2011 (Accessed on 3<sup>rd</sup> December 2016, <http://www.assamtribune.com/scripts/detailsnew.asp?id=nov2711/at05>)

Sahni, Ajay & Bibhu Prasad Routray. "SULFA: Terror by Another Name." *South Asia Terrorism Portal* 9, Article 1, July 2002 (Accessed on 8<sup>th</sup> December 2016, <http://www.satp.org/satporgtp/publication/faultlines/volume9/Article1.htm#13>)

Sonpar, Shobhna. *Violent Activism: A Psychological Study of Ex-Militants in Jammu and Kashmir*. New Delhi: Aman Public Charitable Trust, 2007

-. "A potential resource? Ex-militants in Jammu and Kashmir", *Intervention*, no. 2 (2008): 147 – 153.

Upadhyay, Archana. *India's Fragile Borderlands: The Dynamics of Terrorism in North-East India*. UK: I.B. Tauris & Co Ltd, 2009.



# Human Right Violation in Assam

Monjita Basumatary

## **ABSTRACT :**

All human beings belong to humankind entitled to enjoy rights since birth. Rights are natural in civil society without which life is not worth living satisfying and meaningful. So, the term "human Right" is very important for human society since the birth of civilization. Economic, Social and Cultural development are impossible without respect for human right. Human right and freedom go hand in hand. For instances, In England, the charter of Magna carta (1215) not only made provision to deny the kings authority to interfere civilian rights, it also made the church made free from government interfere. It allowed citizens right over property, due process of law and equality before law. In this paper an attempt is made to study the types and manners of Human Rights violation in Assam as well as its causes and impacts. Further, the paper try to highlight the Acts and laws imposed to strengthen armed forces and to prevent any disturbances to bring peace in the state.

## **INTRODUCTION :**

All human beings need rights. Without Right life is meaningless. Right is endowment of God. Everybody has right to live, expression of thought, right to file case against injustice, right to be happy. So, it is natural in civil society without which human development is impossible. So, for instants in England, the Charter of Magna (1215) Carta not only made the provision to deny the kings authority to interfere in civilian rights, it also made the church

free from government interference. The 1776 American Declaration of Independence from the British empire, “we hold these truth to self –evident, that all men are created equal with life ,liberty and happiness. The French revolution 1781 also declares, “Declaration of Rights of men.

The Human Rights has been occupied top in the Indian’s historical tradition and culture. According to philosophers and thinkers , Human rights are related with higher moral law which is value of Universal validity such as Dharma (righteousness) Artha(Wealth) Kama(desires),and Moksha(Salvations) with a view to established a harmonious social order by balance between inner and outer spiritual and material aspects of life. Dharma impelled men to be righteous .The philosophers of Vedic age endeavored to define human rights as which are inherent in our nature.

Further, ignorant, illiterate people violated the Human Rights by indulging activities of externalists, insurgency dacoits etc. Idle, illiterate weak and drunkard people are despised by high elite class. As they are ignorant of their rights and others rights.

#### **OBJECTIVE:**

- 1) This paper try to study the types of human Rights Violation in Assam; and its causes and impacts.
- 2) To highlight the unrestricted Armed forces Acts and laws and to study details about how these Acts and laws effects Common people of Assam.
- 3) To suggest remedy from human right violation.

#### **IMPORTANCE :**

All human beings are entitled to rights and freedom for worth living satisfying and meaningful. Human life is incomplete without those rights and development and progress is impossible. But these rights are misused by privileged and elite groups and governments in the name of bringing peaces in disturbances areas .Besides, Valuable human rights are neglected by illiterate people and drunkard people in any time any places, Assam is worst sufferer of Human Right violation since independence .In 1985, 1990, 1997,

1993 common people of Assam had to bear various kind of violation in the name of extremist insurgency, separatist movement by the Indian Government imposing pota, TADA, special armed force ACT etc. During army operation and times of disturbances in some areas of Assam the poor, illiterate ,the underprivileged and the members of the minority groups becomes the victims of capital punishment the rich or affluent person ever after committing generous crime hardly het penalty. So, the study of human right violation is most important need of the hour .

**Methodology:-** In writing this paper descriptive method is used as methodology of writing this paper. The data is collected from secondary sources of books Journals, internet sources etc.

**Type of Human Right Violation :** Assam is the worst sufferer of Human Right Violation due to separatist movement and insurgencies organizations ULFA,BLT,NDFB etc. In 2007,THE NATIONAL CRIME RECORD Bureau (NCRB)recorded a total of 6,844 crimes in Assam,which accounted for nearly 3.7 percent of all crimes in India. The Government of India has launched several counter insurgency campaigns over the years to bring peace but the people suffered human right violation in the following different forms.

#### **IN HUMAN TREATMENT OF SECURITIES AND POLICE FORCES :**

The police and Security forces arbitrarily arrested detente ,blackmail ,raped extorted the people of Assam.So, the complain against police forces has also increased for human right violation by the police forces .So, the state government constituted the Assam police Accountability Commission (APAC),60 complaints were received by the APAC against various police personal in 16<sup>th</sup> October,2008.

#### **VIOLENT AGAINST WOMEN :**

In Assam women suffered various kind of human right violation since birth .Most violent against women are domestic violence, Kidnapping ,trafficking ,rape etc. The most police forces are instead of helping, indulged and treated differently despising their (Women) human status by neglecting their plea committed

violence towards women. According to 'sources of the Assam Government from 2009 to 2010, 125 women were murdered 1430 were raped 143 were subjected to dowry related harassment and cases were registered as domestic violence against women and 40 cases were trafficking of women. Suspect ion of witch is another violation against women in Assam which is very widespread in rural areas of Assam.

#### **VIOLATION OF THE RIGHT OF THE CHILD :**

In Assam children also become the victims of violation. Children are traffic, forced to work and in family also they are not given free to asserted their opinion. In this cases parents violated the child right of expression. Primarily girls children are traffic and forced to work in most risky work in appalling conditions. The rescue girl child after being freed from clutch of trafficking are kept in IDP camps where their rights to health, food and education are neglected and further become more likely vulnerable to trafficking. Besides, the minority, weaker sections of people, SC and ST are subjected to frequent violation by the government machinery or elite groups. These violation becomes more worst during disturbances they are subject to be thought as wild animal in many cases. Primarily people of weaker sections are engaged in argument for land, non implement of plan, job schemes etc .

Discrimination abuses are also other violence against women and men. On the basis of religion, race castes and gender human beings are discriminated in Assam, which hampers the socio-economic development of the society. **Various Acts and Laws imposed to strengthened securities and armed forces to prevent any disturbances occurring in the state :**

In Nov-1990, the Indian army was deployed to fight against secessionist insurgents in rural areas of Assam, the forces have indulged in extra-judicial executions ,custodian death, fortune and rape. In 1993 state human right commission was constituted to ensure free and fair trail to redressal of the victims of human right violation. But it fail to function properly to same redressal due to same lacauna.

According to special armed forces (AFSPA) Acts of 1958, methods of Army operation was operationalized in 1997 when a tea producer Surendra Paul was killed with extensive arrested, detention in the villages violating common people rights on Assam.

Most dehumanized and human Right violations activities were operationalised in 1993 and 1997 ,1986 and 2008 in Assam.

The Law of Human Right violation unified command was constituted in the early part of 1997 and all anti- insurgency operations was conducted under this Act .Under this Act it is mandatory to conduct search operations in the presence of a judicial magistrate and mandatory to Indian army to hand him over to the local police for questioning .But this rule is hardly ever followed in practice.

According to Armed forces Act, 1958, revised 1972, any personal of the Indian Army can shoot to kill, destroy property suspecting committing offence and arrested any one without cognizably. This give the Indian Army the right to violate human right.

The (TADA),Terrorist disruptive Act ,1985, preventive detention Law 1995 conferred on the security forces ability to detain prisoner without any trail for upto one year. There is a plethora of preventive detention Acts which gives the government and the security forces to curtail the fundamental Right to life and liberty.

National security Act 1980 was again another force applied to operation in Assam during disturbances. The (NASS) Manav Adhikar Sangram Samiti has been making incessant effort through various means to curtail human right violations against autocracies and dehuman Acts.

### **CAUSES OF HUMAN RIGHTS VIOLATION IN ASSAM :**

Ethnic conflict, insurgency rebellion, domestic violence, terrorists attack, failure of State machinery etc are main cause of Human Right violations. Traditional customs and norms, socio-economic factors, political and religion many be the cause of Human Right violation in Assam.

Abuses and discrimination are main causes of Human Right violation. Abuse of Human Right often leads to conflict and conflicts results human rights violations. When masses are deprived from food, cloth and shelter, employment and cultural life and Rights are denied and larger groups of people are excluded from the society's decisions making processes, there is more likely of causing tensions which rise to justice conflict leading human right violations. So this is the short description of the causes of human Right violation.

### **CONSEQUENCES OF HUMAN RIGHT VIOLATIONS :**

During Human Right violations abuse, punishment, ill treatment become order of the day.

So, Family members, communities, societies themselves are adversely affected when Human Right is violated.

Psychological stress which has been arisen as a result of deprivation and socio-economic condition coupled with the cumulative trauma arising from violent state of repression and enter- community conflicts.

Human rights violation effect human being psychology in behaviours creates mental problems, stress, disorder, past traumatic disorder etc.

In Assam the Human rights violation has totally disrupts to healthy Family life. Children were denied fatherly love, guidance support during their formative stage and also denied the care of mother as mother take domestic work.

In Assam due to Loss of social or occupational status and abilities, because of prolonged imprisonment, physical disability or psychological problems result difficulties in finding employment and thus contribute to socio economic hardship.

Due to human right violation in Assam mostly weak and poor people get harassment, when search operation is deployed to subdue extremists.

### **RECOMMENDATIONS AND CONCLUSIONS :**

(I) Firstly, everybody should know the way of prevention of

Human Right violation by proper application of knowledge possess, where, how, when, what to do etc, must be considered if rights are violated.

(II) Giving bribe is main cause of human right violation. So, it should be avoided totally.

(III) To gain something, one should save himself from right of violation. One should go on insisting something he wanted. If insist one's right, it is not wastes of time, but the gain.

(IV) Sometime violator may not know about his Act of violation. He may think it right. Such type of persons should be make know pointing his act. If he is allow to do mistake freely and regularly, then he will thought it right. So, violator should be make known of his guilty.

(V) One that violated should go on demanding if something is violated. otherwise you will violated again and in future.



## **Right to Education as a Basic Human Right- An Analytical Study**

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### **ABSTRACT :**

Education is the most potent mechanism for the advancement of human beings. It enlarges, enriches and improves the individual's image of the future. A man without education is not more than an animal. A well-educated man is a more dependable worker, a better citizen, a centre of wholesome influence, pride to his community and honour to his country. It is because of this that Kothari Commission report starts with the remark, "The destiny of India is being shaped in its classroom". Education is a human right and fundamental right, without which capabilities for a decent life and effective participation in society are less likely to be developed. Since the Right of Children to Free and Compulsory Education (RTE) Act, 2009 has provided us the tools to provide quality education to all our children, it is now imperative that we, the people of India, join hands to ensure the implementation of this law in the true spirit. In other words, we have achieved targets related to the quantity of education but what we need to concentrate today is the quality of education. It is said that in the Twenty First century, 'a nation's ability to convert knowledge into wealth an social good through the process of innovation is going to determine its future, accordingly twenty first century is termed as century of knowledge. The significance of education was very well explained in case of Brown V. Board of education, in following words: "It is the very foundation of good citizenship. Today, it is principal instrument

in awakening the child to cultural value, in preparing him for later professional training and in helping him to adjust normally to his environment.”

**Key Words :** *Education , Human Rights, Fundamental Rights, Children*

## **INTRODUCTION:**

Education is an all side development of Human inner-ability including body mind intellect and soul. Education means the natural harmonious and progressive development of man’s innate power. It is the development of all these capacities in the individual which will enable him to control his environment and fulfill his possibilities.” John Dewey “Education is mainly an achievement of knowledge which develop life”<sup>1</sup> Education means achievement of knowledge through institutional instruction. Individual life and character are based on education. It is the only alternative for the development of human life of society and nation. Education is termed as Man’s third eye.

“Human beings are rational beings. They by virtue of their being human, possess certain basic and inalienable right which are commonly known as human right”.<sup>2</sup> Since these rights belong to them because of their very existence, they become operative with their birth. Human right being the birthright, are therefore, inherent in all the individual irrespective of their caste, creed, religion, sex and nationality. These rights are essential for the individual as they are consonant with their freedoms and dignity and are conducive to physical, moral, social and spiritual welfare. They are also necessary as they provide suitable conditions for the material and moral uplift of the people. Because of their immense significance to human beings human rights are also sometime referred to as fundamental rights, basic rights, inherent rights and birthrights.

Presently, the vast majority of legal scholars and philosophers agree that every human being is entitled to some basic rights. Thus there is universal acceptance of the principles of human

rights in domestic and international place Human right is a generic term and it embraces civil right, civil liberties, and social economic and cultural rights. It is therefore difficult to give a precise definition of the term human right. However it can be said that the rights that all people have by virtue of their human being are human rights. The idea of human rights is bound up with human dignity. Thus all those rights which are essential for the maintenance of human dignity, may be called human rights.

#### **EDUCATION A BASIC HUMAN RIGHT :**

Right to life is basic human rights. It does not simply means physical life. But also cover other expression of life. It is something more than a mere biological existence of human body. Life also include personality and whatever is reasonably required to give expression to life its fulfillment and it achievements. The right to life does not mean the continuance of a person's animal existence. It means" the fullest opportunity to develop one's personality and potentiality to the high level possible in the existing stage of our civilization. Inevitably, it means the right to live decently as a member of a civilized society. In a civilized society decent life is not possible without the right to education. So like right to life, right to education is also a basic human right for living decently as a member of civilized society. The right to education is also find a special place in Universal Declaration of Human Right.

#### **UNITED NATION ORGANIZATION AND RIGHT TO EDUCATION:**

On 10<sup>th</sup> December 1948. The General Assembly of United nation adopted Universal Declaration of Human Right. On the Universal Declaration of Human Right, education gets a suitable place for its importance in the development of human life.

"The UDHR was primarily an enunciation an enunciation of common standard to be adopted by all people and all nations in the promotion and protection of human right across the globe.<sup>3</sup> It was a yard sticks of international standard a path finding instrument. It spells out the rights to life, liberty and security of person, to fair trial by due process of law, to freedom, of conscience,

thought, expression association and privacy, freedom of movement. It also enumerated such as economic, social and cultural right, the right to equal pay for equal work, right to form and join trade unions, right to rest and leisure and right to health care and education and so on.

The declaration of human rights by U.N.O. on 10<sup>th</sup> December 1948 has been described as International Magna-carta or international charter on Human Right. The declaration is an endeavor to grant various rights to the human being all over the world. Special emphasis has been laid on the right to education.

Some provisions on education as laid down in the charter of human rights by the U.N.O. are as "Article 26<sup>th</sup> it read as under; <sup>4</sup>

(i) Everyone has the right to education. Education shall be free; at least at the elementary and fundamental stages. Education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all, on the basis of merit.

(ii) Education shall be directed to the fullest development of human personality and to the strengthening o respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial religious groups, and shall further the activities of the United Nations for the maintenance of peace. Article 27 lays down as:

(i) Everyone has the right to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefit.

#### **LEGAL EFFECT OF THE DECLARATION :**

The Universal Declaration, the Magna Carta of right was one of the first major achievements of the United Nations in the field of human rights, the Declaration set for the international community a common standard of achievement. It recognizes the inherent dignity and the equal inalienable rights of all people of all nations. The human rights mentioned in the Declaration are fundamental in a moral sense and are universal, indispensable, independent and

interrelated. It is the duty of the states regard less of their social, political and economic system to promote and protect human rights.

The declaration was not intended to be legally binding and therefore it did not imposes any legal obligation on the states to give effects to its provision. In other words, from the legal point of view, the declaration was only a recommendation; it was not strictly binding on the states. The General Assembly proclaimed the declaration as "a common standard of achievement for all peoples and all nations and called upon all member states and all people to promote freedoms set forth therein".<sup>5</sup>

### **COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS:**

The General Assembly on December 16, 1966 adopted the covenant on Economic, social and cultural rights. It is consisted of 31 articles, which are divided into five parts. Article 13 of the covenant is regarding right to education.

The Article 13 read as:

1. The state parties to the present covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and further the activities of the United Nations for the maintenance of peace.
2. The state parties to the present covenant recognize that, with a view to achieving the full realization of this right:
  - a) Primary education shall be compulsory and available free to all.
  - b) Secondary education in its different from, including technical and vocational secondary education shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.
  - c) Higher education shall be made equally accessible to all, *on the basis of capacity by every appropriate means, and in*

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particular by the progressive introduction of free education.

d) Fundamental education shall be encouraged on intensified as far as possible for those people who have not received or completed the whole period of their primary education.

e) The development of a system of school at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be improved.

“Human Right is essential for full development of human personality and for human happiness. They are indispensable for physical and mental uplift of the human race”.<sup>6</sup> These right are inviolable because they are not only vital for the development of human personality but also because without them men would be reduce to the level of animals.

#### **INFLUENCE OF THE UNIVERSAL DECLARATION :**

The Universal Declaration of Human Rights has exercised a profound influence upon the minds of men. “Various parts of the declaration have been cited in National Constitutions and other international instruments as well as regional treaties and convention.<sup>7</sup> It has also been invoked by a board of decision makers national and international, judicial and other. Adoption of declaration was really of great significance, which lunched a new era of hopes and aspiration for human civilization in the promotion of human rights across the globe.

The declaration of human rights by the U.N.O. on 10<sup>th</sup> December 1948 has been described as international ‘Magna Carta’ or international Charter of Human Rights. The declaration is an endeavour to grant various rights to the human beings all over the world. Special emphasis has been laid on the right to education.

As the declaration has influenced the various national constitutions, regarding providing human right to their respective Nation. An effort has been made in this chapter to discuss the provision regarding right to education guaranteed by the different constitution of the world.

### RIGHT TO EDUCATION IN INDIA :

India was a signatory of UDHR, the Indian constitution adopted by the constitutional assembly on November 26, 1949 was greatly influenced by the declaration. A number of fundamental rights guaranteed to individual in part- III of the constitution of India are similar to the provisions of the UDHR.

### SOME INDIAN CONSTITUTIONAL PROVISIONS AND UDHR PROVISIONS:

#### (Before 86 amendment of Indian Constitution)

Name of the right	UDHR	Indian Constitution
Equality before law	Article – 7	Article – 14
Prohibition of discrimination	Article – 7	Article – 15 (i)
Equality of opportunity	Article – 21 (2)	Article – 16 (i)
Freedom of speech and expression	Article – 19	Article – 19 (i) (a)
Freedom of peaceful assembly	Article – 20 (i)	Article – 19 (i) (b)
Right to form association	Article – 23 (4)	Article – 19 (i) (c)
Freedom of Movement within boundary	Article – 13(i)	Article – 19(i)(d)
Protection in respect of conviction for offence	Article – 11(2)	Article – 20(i)
Protection of life and personal liberty	Article – 3	Article - 21
Freedom of Religion	Article – 18	Article – 25(i)
Remedy for enforcement of Right	Article – 8	Article – 32
Right to Education	Article – 26	Article – 21A

The chart shows that the UDHR which was adopted, just before the Indian constitution widely, held to have provided the model for the letters of human right guarantee.

Right to Education got the constitutional status under Article 21A, 41,45 and 46 of the Indian constitution.

**The Honorable Supreme Court of India in Bandhu MuktiMarchav. Union of India<sup>8</sup>** While interpreting the scope of “right to life” under Article 21 of the constitution held that it include

“education facilities”. In **Mohini Jain v. State of Karnataka**<sup>9</sup> the Apex court held that right to education flows directly from “right to life” the right to life under Article 21 and dignity of an individual cannot be assured unless it is accompanied by the right to education. In **Unni Krishnan v. State of A.P.**<sup>10</sup>: the Supreme Court was asked to examine the correctness of the decision given by the court in **Mohini Jain’s** case. The petitioners running Medical and Engineering colleges in the state of Andhra Pradesh, Karnataka, Maharashtra, and Tamil Nadu contended that if Mohini Jain decision is correct and followed by the respective state government they will have to close down their colleges. The five Judge bench by 3-2 majority party agreed with the **Mohini Jain** decision and held that right to education is a fundamental right under Art 21 of the constitution as “it directly flows” from right to life. But as regards its content the Court partly overruled the **Mohini Jain’s** case and held that the right to free education is available only to children until they complete the age of 14 years, but after that the obligation of the state to provide education is subject to the limits of its economic capacity and development. The obligation created by Articles 41 , 45 and 46 can be discharged by the state either establishing its own institutions or aiding, recognizing or granting affiliation to private institutions.

“The court through judicial activism has made the basic right to education as fundamental enforceable right. This interpretation of the court is also in consonance with Article 26 of the Universal Declaration of Human Rights and Article 13,1(a) and (c) of international covenant on economic social and cultural right, 1966”.<sup>11</sup>

Now in India, Right to education is a fundamental right inserted in 86<sup>th</sup> amendment of the Constitution of India as mentioned in part-III, Article 21 –A of the constitution .It provides education is free and compulsory up to 6 to 14 years of age.

### **RIGHT TO EDUCATION IN BANGLADESH :**

Bangladesh obtained Independence from Pakistan on the 26<sup>th</sup> day of March 1971 and established the Independent, Sovereign

People's Republic of Bangladesh. Bangladesh adopted its constitution on 4<sup>th</sup> November 1972.

In Part- II of the constitution some Fundamental principle of state policy is mentioned. Right to Education is one of them, Article 17 of the constitution of Bangladesh reads as: Free and compulsory education the state shall adopt effective measures for the purpose of:

- a) Establishing a uniform, mass-oriented and universal system of education and extending free and compulsory education to all children to such state as may be determined by law.
- b) Removing illiteracy within such time as may be determined by the law.

#### **RIGHT TO EDUCATION IN PAKISTAN :**

The constitution of Pakistan has guaranteed right to education to its citizen irrespective of their race, religion caste, or place of birth that means right to equality in education. Article 22 (3)(a) of the constitution provided that "No citizen shall be denied admission to any educational institution, receiving aid from public fund on the ground of race, religion, caste, or place of birth".

From the above provision it is clear that Right to education is provided by the constitution of Pakistan, though it is not mentioned free and compulsory but there is no denial of right to education, which is basic human right.

#### **RIGHT TO EDUCATION IN BELGIUM :**

The constitution of Belgium has provided Right to Education as fundamental right. Article 24 of the Belgium Constitution provides Education as fundamental right and access to education is free until the end of mandatory schooling.

#### **RIGHT TO EDUCATION IN BRAZIL :**

The constitution of Brazil in Article 208 of the constitution provides that Access to free and compulsory education is a subject of public right.

**RIGHT TO EDUCATION IN CHINA :**

The constitution of China under Article 46 provided the right to education of the citizen of China. Clause (2) of Article 46 provides that “the state shall promote the all-round, moral, intellectual and physical development of the children and young people”.

**RIGHT TO EDUCATION IN EGYPT :**

The constitution of Egypt guaranteed right to education. According to Article 18 education is a right guarantee by the state. It is obligation in the primary level.

Article 20 of the constitution provides at “Education in the state education institution shall be free of charge in the various stages.”

From the above provision it is clear that in Egypt. Education is a fundamental right and it is compulsory in primary level and free in all state as maintained by the state education institution.

**RIGHT TO EDUCATION IN IRAN :**

Article 30 of the constitution of Iran provides that, the Government must provide all citizens with free education up to secondary school, and must expand free higher education to the extended required by the country for attaining self-sufficiency.

**RIGHT TO EDUCATION IN IRELAND :**

The constitution of Ireland guaranteed right to education as fundamental right. Article 42(4) provides as “the state shall provide for free primary education and shall Endeavour to supplement and give reasonable aid to private and corporate educational initiative, and when the public good requires it, provides other educational facilities or institution with due regard, however for the right of parents, especially in the matter of religious and moral formation.”

**RIGHT TO EDUCATION IN IRAQ :**

The constitution of Iraq in Article 27(a) provided as “the state undertakes the struggle against illiteracy and guarantees the right to education, free of charge in its primary, secondary and University level for its citizens”.

Article 27(b) provides as "the state shall strive to make the primary education compulsory".

#### **RIGHT TO EDUCATION IN KUWAIT :**

Article 13 of the constitution of Kuwait provides that education is a fundamental requisition for the society, assured and promoted by the state.

Therefore, it can be said that in Kuwait education is a fundamental right state been the responsibility for educating its citizens.

#### **RIGHT TO EDUCATION IN NAMIBIA :**

Article 20 of the Namibian constitution provides right to education to Namibian people. According to Article 20(i) "All people shall have the right to education.

Article 20(D) provides that primary education shall be free and compulsory.

#### **RIGHT TO EDUCATION IN ITALY :**

The constitution of Italy guarantees Right to education. According to Article 34

(i) Education is available to everyone.

(ii) Elementary education up to eight years is free and compulsory.

Clause (2) of Article 27 provides that the cantons shall provide for adequate primary education which shall be placed wholly under state control. Such education shall be compulsory and in public school free of charge.

Therefore it is seen that in Switzerland education is a basic right and it is compulsory up to primary level and in public school it is free of charge up to primary level.

#### **RIGHT TO EDUCATION IN ENGLAND :**

The constitutional law of England is not embodied in a single document it is the whole sum of customary law or common law, convention and different statute passed by the parliament.

In England right to education is a state guaranteed right and it is free and compulsory up to elementary stages. In England, "Everyone has the right to educating. Education shall be free, at least in the elementary and fundamental stage. Elementary education shall be compulsory and higher education shall be equally accessible to all on the basis of merit".<sup>12</sup>

Almost all the country in the world by making provisions in their constitution, guaranteed right to education as a fundamental right.

### **RIGHT TO EDUCATION IN RUSSIA :**

Article 43 of the constitution of Russia provides regarding the right to education.

Clause (1) of Article 43 provides that "Everyone shall have the right to education"<sup>13</sup>

Clause (2) provides the accessibility and gratuity of pre-school, general secondary and vocational. Secondary education in public and municipal educational institution and enterprises shall be guaranteed.

Clause (3) of Article 43 provides: Everyone shall have the right to receive free of charge and on a competitive basis, higher education in a state or municipal educational institution.

Clause (4) of Article 43 provides – Basic general education shall be mandatory. Parent or person substituting for them shall make provision for their children to receive basic general education.

Clause (5) of Article 43 provides – The Russian Federation shall institute Federal state educational standards and support various forms of education and self-education.

### **RIGHT TO EDUCATION IN SWITZERLAND :**

Right to education is provided under Article 27 of the Switzerland constitution.

Article 27 clause (1) reads – The confederation is entitled to set up in addition to the existing polytechnic, a federal university and other establishment for higher education

Therefore, not only the government, but very literate citizen should contribute in battling the demon of illiteracy. Our motto should be "each one teach one", if we are to become a development nation. one of the initiatives is "Teach India", whose aim is to provide a platform to educated Indians to provide assistance in basic education to the Unprivileged children. It is now the turn of the youth to step up and take this nation towards the light of literacy.<sup>14</sup> In the words of Barak Obama- "change will not come if we wait for some other person or some other time. We are the ones we've been waiting for. We are the change that we seek".

**NOTES:**

1. Mahanty.Jagannath : Human Rights Education; Edition 2003, Deep & Deep Publications Pvt, Ltd, New Delhi, P-175.
2. AgarwalDr. H.O.: Human Right; Edition 2004, Central Law Publications, Allahabad; P-2
3. BhargavaGopal: Human Right, Edition 2002, Deep & Deep Publication Pvt, Ltd, P-64
4. PyleeM.V.: Select Constitution of the world, Edition 2006; Universal Publications Pvt, Lt; P-772
5. Supra Note -2; p-32
6. Supra Note -3; P-62
7. ibid; P-65
8. AIR 1984 SC 802
9. AIR 1992 SC 1858
10. (1993) 1 SCC 645
11. DesutaSunil and DeshtaKiran; Fundamental Human Rights; P-76
12. Supra Note- 4; P-71
13. ibid; P-335
14. Pal MalikProf. Krishna: Right To Elementary Education; Edition 2012; Law Publishers, Faridabad; P-8



# **Women Rights in Indian Constitution and Its Violation**

**Namisha Saikia**

M.Sc. PHYSICS (MORIGAON,ASSAM)

## **ABSTRACT :**

Human rights in India is an issue complicated by the country's large size & population, widespread poverty, lack of proper education & its diverse culture, even though being the world's largest sovereign, secular, democratic republic. There are so many human rights such as woman right, children right etc. but in our seminar paper we briefly discussed about the woman rights. There are so many woman rights such as- One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women, One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women, the state to secure equal pay for equal work for both Indian men and women etc. But such kind of woman rights are how much applicable and the violations like violation of Right to education, violation of Political Right, violation of Right to Property, violation of Right to reproductive Health, violation of Right to Equal Opportunity For employment and Right to Get equal Wages for Equal Work etc against Indian woman in our society are also discussed. Government should try to take initiatives. We focus on the violations and discuss here such kind of way to develop the status of the Indian women.

## **INTRODUCTION :**

### **WHAT IS HUMAN FIGHT IN INDIAN CONSTITUTION :**

Human rights in India is an issue complicated by the

country's large size & population, widespread poverty, lack of proper education & its diverse culture, even though being the world's largest sovereign, secular, democratic republic. The Constitution of India provides for Fundamental rights, which include freedom of religion. Clauses also provide for freedom of speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad. The country also has an independent judiciary and well as bodies to look into issues of human rights. Civil society groups face harassment and government critics face intimidation and lawsuits. Free speech has come under attack both from the state and by interest groups. Muslim and Christian minorities accuse authorities of not doing enough to protect their rights. But in the recent years, more emphasis is given to minority rights & freedom of speech.

#### **WOMEN RIGHT AS HUMAN RIGHT :**

The slogan 'Women's Rights are Human Rights' was first used at the UN World Conference on Human Rights in Vienna in 1993. Though the slogan "human rights are women's rights and women's rights are human rights" may at first appear to be trite, or at best truism, a closer and more careful scrutiny will show the serious undertones underlying this slogan. It signifies, firstly, that women as a class have been denied fundamental human rights for centuries and have been subject to worst forms of bigotry, discrimination and exploitation. On the other hand it means that a real support of human rights is not possible unless the exponent also vows to support and uphold rights which are available only to women like, equality with men, maternal health and sexual and reproductive rights, freedom from gender based violence, opportunities to access to a safe, high-quality education. Put simply, republic around the world cannot ignore women rights and at the same time espouse human rights. Women rights are human rights available to women as a part and parcel of humanity coupled with gender specific rights they should have because of being women. Moreover we cannot ignore that human rights are not merely a set

of inalienable rights which are available to an individual because he is human. Human Rights are necessary and inalienable part and parcel of Humanism which is the underlying philosophy of Democracy. This concept is so important that it needs elaboration. Every political structure is ultimately based on some philosophy, a philosophy which is essential for survival and growth of that Political structure. If monotheistic religion was the dominant philosophy of Monarchy, if polytheistic nature worship of early stages of feudalism and slavery, if marxism of socialism, then humanism is of democracy. A democracy can not exist unless it considers the welfare of man as the ultimate goal of the state and a human being as an end in itself. Basic respect of human being and a firm belief in his equality is so important to Democracy that it usually makes the most fundamental of its basic structure. Only if we believe all human beings as equals can we conclude that no one can rule them except without their own consent. Strength of democracy in a society ultimately depends on how deeply entrenched are the democratic values in its citizens. By democratic values we usually mean belief in equality of human beings and equality of their rights. Countries which have historically failed to inculcate in them this respect of human rights have offered the life and liberties of its citizens to the dark forces of authoritarianism and anarchy. This process is ongoing. Social processes never stay unchanged, stagnation means decay. Curtly, a country has only two choices. Either to grow more democratic or more despotic. The government which refuses to offer Human Rights to all the sections and parts of society is sure to degenerate out of democracy itself. So a failure to refuse human rights, and a failure to extend democratic values to those who need it most is sure to thwart and impede the onward march of democracy and progress itself. Democracy has historically proved itself to be a form fo government which is highly conducive to the progress of economy, science and culture. Compromising women rights is compromising democracy and compromising democracy is compromising progress. Various international Conventions, Declarations and statutes have

highlighted and accepted this underlying unity between Women Rights and Human Rights. It shall be worthwhile to mention a few. World Conference on Human Rights in Vienna in 1993 was successful in integrating women's rights by recognizing rape, sexual slavery, and all forms of sexual harassment and exploitation as human rights issues. The Rome Statute Explanatory Memorandum, which defines the jurisdiction of the International Criminal Court, recognizes rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilisation or any other form of sexual violence of comparable gravity as crime against humanity. The Vienna Declaration and Programme of Action also condemn systematic rape as well as murder, sexual slavery, and forced pregnancy, as the "violations of the fundamental principles of international human rights and humanitarian law."

The rights available to woman (ladies) in India can be classified into two categories, namely as constitutional rights and legal rights. The constitutional rights are those which are provided in the various provisions of the constitution. The legal rights, on the other hand, are those which are provided in the various laws (acts) of the Parliament and the State Legislatures.

#### **CONSTITUTIONAL RIGHT TO WOMEN:**

The rights and safeguards enshrined in the constitution for women in India are listed below:

1. The state shall not discriminate against any citizen of India on the ground of sex [Article 15(1)].

2. The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women [Article 15(3)].

3. No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex [Article 16(2)].

4. Traffic in human beings and forced labour are prohibited [Article 23(1)].

5. The state to secure for men and women equally the right to an adequate means of livelihood [Article 39(a)].

6. The state to secure equal pay for equal work for both Indian men and women [Article 39(d)].

7. The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [Article 39(e)].

8. The state shall make provision for securing just and humane conditions of work and maternity relief [Article 42].

9. It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [Article 51-A(e)].

10. One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [Article 243-D(3)].

11. One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women [Article 243-D(4)].

12. One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women [Article 243-T(3)].

13. The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide [Article 243-T(4)].

#### **LEGAL RIGHTS TO WOMEN :**

The following various legislation's contain several rights and safeguards for women:

1. Protection of Women from Domestic Violence Act (2005) is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who have been/ are in a relationship with the abuser and are subjected to violence of any kind—physical, sexual, mental, verbal or emotional.

2. Immoral Traffic (Prevention) Act (1956) is the premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organised means of living.

3. Indecent Representation of Women (Prohibition) Act (1986) prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.

4. Commission of Sati (Prevention) Act (1987) provides for the more effective prevention of the commission of sati and its glorification on women.

5. Dowry Prohibition Act (1961) prohibits the giving or taking of dowry at or before or any time after the marriage from women.

6. Maternity Benefit Act (1961) regulates the employment of women in certain establishments for certain period before and after child-birth and provides for maternity benefit and certain other benefits.

7. Medical Termination of Pregnancy Act (1971) provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.

8. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994) prohibits sex selection before or after conception and prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female foeticide.

9. Equal Remuneration Act (1976) provides for payment of equal remuneration to both men and women workers for same work or work of a similar nature. It also prevents discrimination on the ground of sex, against women in recruitment and service conditions.

10. Dissolution of Muslim Marriages Act (1939) grants a Muslim wife the right to seek the dissolution of her marriage.

11. Muslim Women (Protection of Rights on Divorce) Act (1986) protects the rights of Muslim women who have been divorced by or have obtained divorce from their husbands.

12. Family Courts Act (1984) provides for the establishment of Family Courts for speedy settlement of family disputes.

13. Indian Penal Code (1860) contains provisions to protect Indian women from dowry death, rape, kidnapping, cruelty and other offences.

14. Code of Criminal Procedure (1973) has certain safeguards for women like obligation of a person to maintain his wife, arrest of woman by female police and so on.

15. Indian Christian Marriage Act (1872) contain provisions relating to marriage and divorce among the Christian community.

16. Legal Services Authorities Act (1987) provides for free legal services to Indian women.

17. Hindu Marriage Act (1955) introduced monogamy and allowed divorce on certain specified grounds. It provided equal rights to Indian man and woman in respect of marriage and divorce.

18. Hindu Succession Act (1956) recognizes the right of women to inherit parental property equally with men.

19. Minimum Wages Act (1948) does not allow discrimination between male and female workers or different minimum wages for them.

20. Mines Act (1952) and Factories Act (1948) prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.

21. The following other legislation's also contain certain rights and safeguards for women:

1. Employees' State Insurance Act (1948)

2. Plantation Labour Act (1951)

3. Bonded Labour System (Abolition) Act (1976)

4. Legal Practitioners (Women) Act (1923)

5. Indian Succession Act (1925)

6. Indian Divorce Act (1869)

7. Parsi Marriage and Divorce Act (1936)

8. Special Marriage Act (1954)

9. Foreign Marriage Act (1969)

10. Indian Evidence Act (1872)

11. Hindu Adoptions and Maintenance Act (1956).

22. National Commission for Women Act (1990) provided for the establishment of a National Commission for Women to study and monitor all matters relating to the constitutional and legal rights and safeguards of women.

23. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal). Act (2013) provides protection to women from sexual harassment at all workplaces both in public and private sector, whether organised or unorganized.

**VIOLATION AGAINST INDIAN WOMEN :  
VIOLATION OF RIGHT TO EQUALITY :**

“The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”<sup>1</sup> [The constitution of India, P-07].

Discrimination against the girl child starts the moment she enters into the mother’s womb. Gender discrimination, female feticide and female infanticide is common in India, so here “right to life” is denied to women. In India, men are always assumed to be superior to women and are given more preference. A girl is considered a burden by parents and they preferred male child because they think only male child is able earn for family and the sources of family income will increase . Since a girl child would be going to her husband’s place upon marriage, the parents do not want to waste their resources on her upbringing. Again the demand for large dowry and the huge wedding expenses caused a lot of hardship to the parents. So, the parents preferred a male child as they would be able to bring in large dowry.

**VIOLATION OF RIGHT TO EDUCATION :**

Right to Education is the basic fundamental human right. The literacy rate in 2011 census was 74.04%: 65.46% among females and 82.14% among males. The position of women’s education in India is bad shape. Specially in rural India women are not aware even the value of education in fact they give more preference on their male child education. Due to large percentage of uneducated women in India, they are not even aware of their basic human rights and can never fight for them. Though female employment rate is high in rural areas, they were engaged mainly in unskilled job but in urban areas due to better education were engaged in variety of jobs. Education especially female education

is a major factor influencing health. It leads to better utilization of health care and greater community/ political participation.

There were numerous reports of schools refusing admission or denying entry to underprivileged students. Across the country more than eight million children between six and 14 years of age remained out of school. UNICEF estimated that school attendance among girls dropped from 86 percent in primary school to 59 percent in secondary school. Potential causes included family pressure, lack of secondary schools in rural areas, and poor quality of school facilities, including a lack of dedicated sanitation facilities for girls.

#### **VIOLATION OF POLITICAL RIGHT:**

The political status of women in India is very unsatisfactory, particularly their representation in higher political institutions. In rural India specially among Muslim , they are not even permitted to go for their valuable vote though they are citizen of India. Their political Rights are denied and the representation of women in political participation is very low. The government has made 33% reservation of seats for women in Parliament and Provincial Legislation but inspite of willingness of women they don't get their family support for contrasting election .

#### **VIOLATION OF RIGHT TO PROPERTY :**

In most of the Indian families, women do not have own property in their own names and unable to share the parental property. Though, women have been given rights to inheritance, but the sons had an independent share in the ancestral property, while the daughter's shares were based on the share received by the father. Hence, father could anytime disinherit daughter by renouncing his share but the son will continue to have a share in his own right. The married daughters facing harassment have no rights in ancestral home.

#### **VIOLATION OF RIGHT TO REPRODUCTIVE HEALTH :**

According to the 2012 UN Population Fund State of World Population Report, the maternal mortality ratio was 200 deaths

per 100,000 live births in 2010. The major factors influencing the high maternal mortality rate were lack of adequate nutrition, medical care, and sanitary facilities. Most of the women suffer from anemia, low weight due to the inferior quality diet. Though women make cook but still they have to take meal after male member in the family. According to the World Bank report, malnutrition is the major cause of female infertility. Boys are given more nutritious foods like milk, eggs, butter, ghee, fruits, and vegetables as compared to girls. Lack of healthcare facilities and poverty has been resulting in India accounting for 27% of all maternal deaths worldwide.

#### **VIOLATION OF RIGHT TO EQUAL OPPORTUNITY FOR EMPLOYMENT AND RIGHT TO GET EQUAL WAGES FOR EQUAL WORK :**

The law prohibits discrimination in the workplace, but employers paid women less than men for the same job, discriminated against women in employment is common problem in India. Indian labour market is adverse to women workers. It shows that, the role of women in large scale industries and technology based businesses is very limited. But even in the small-scale industries their participation is very low. Only 10.11% of the micro and small enterprises are owned by women today. Statistics show that only 15% of the senior management posts are held by the women. Women mostly work in light industries as they are unsuitable for work in heavy industries. Also, most of the women work in unorganized sector where the wages tends to be very low. About 94% of the total working women are in unorganized sector (ICSSR, Status of Women in India, 1971-74, p.63.).

#### **CRIMES AGAINST WOMEN IN INDIA :**

Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. Crimes against women occur every minute; every day and throughout the year, though several such crimes go unreported. A total of 2,44,270 incidents of crime against women (both under IPC and SLL) were reported in the country during the year 2012 as

compared to 2,28,650 in the year 2011 recording an increase of 6.4% during the year 2012. These crimes have continuously increased during 2008 - 2012 with 1,95,856 cases in the year 2008, 2,03,804 cases in 2009 and 2,13,585 cases in 2010 and 2,28,650 cases in 2011 and 2,44,270 cases in the year 2012. Women and girls in urban India are also at high risk of gender-based violence. In Delhi, the country's capital, a scan of daily newspapers reveals shocking numbers of cases of violence against women. Assam has reported the highest rate of crime against women at 89.5 during the year 2012 as compared to 41.7 crime rate at the national level.

#### **CHILD MARRIAGE :**

Another serious problem that women faced was that of child marriage. Early marriage affected the growth and development of the children. Fixing the minimum age of marriage of men and women by law was voiced as early as the mid-19th century by Ishwar Chandra Vidyasagar and Keshab Chandra Sen. Vidyasagar argued that early marriage was detrimental to the health of women, their efforts, coupled with that of Mahatma Gandhi, resulted in the passing of the Child Marriage Restraint Act, 1929.

#### **WOMEN TRAFFICKING IN INDIA :**

Indian Constitution prohibits all forms of trafficking under Article 23. It has been observed poor helpless families and tribal society have become the main target group of traffickers. Trafficking has become great human problem in all over human society. Trafficking in its widest sense include the exploitation girls by pushing them into prostitution, forced labour or services, slavery or practices similar to slavery and the trade in human organs. In the case of children who have been trafficked or have become victims of child marriages, it violates their right to education, employment and self determination.

#### **SEXUAL HARASSMENT AND RAPE CASES :**

Rape is recognized as a crime that typically is committed by a man forcing another person to have sexual intercourse against

their will, intercourse by force (Smith 2004:169). The Government of India acted swiftly, modified laws and had set up fast-track courts to deal with the crime. It is ironical that in spite of awakening, the sexual assaults continue to rise while gender equality is enshrined in the constitution. The NCRB reported 24,206 cases of rape across the country in 2011, the latest year for which data was available; rape is considered an underreported crime. Law enforcement and legal avenues for rape victims were inadequate, overtaxed, and unable to address the issue effectively. Forty percent of all sexual abuse cases in India are incest, and 94% of the incest cases had a known member of the household as the perpetrator.

#### **MOLESTATION :**

Sexual harassment, sometimes euphemistically called "eve teasing," remained prevalent. According to the NCRB, 8,570 cases of sexual harassment were reported in 2011, a 14 percent decline from 9,961 cases in 2010; however, there were 42,968 cases of molestation, nearly a 6 percent increase from 40,613 cases in 2010. Cases of rape and molestation remained largely unreported due to social pressure.

#### **KIDNAPPING & ABDUCTION :**

Crimes against women were common. According to the NCRB Crime in India 2011 Statistics, there were 228,650 crimes against women in 2011, a 7 percent increase from 2010. These crimes included kidnapping and abduction, molestation, sexual harassment, physical and mental abuse, and trafficking. The NCRB noted that underreporting of such crimes was likely. The NCRB estimated the conviction rate for crimes against women to be 27 percent. Delhi recorded the highest proportion of crimes against women with 4,489 cases, followed by Bengaluru, Karnataka, with 1,890.

#### **DOMESTIC VIOLENCE AND DOWRY DEATHS :**

Globally, one out of every three women faces violence at the hands of their husbands, fathers, or brothers and uncles in their

homes. The United Nations defines violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life”. “Violence against women is perhaps the most shameful human rights violation. According to the NCRB, in 2011 there were 8,618 reported dowry deaths, mostly bridal deaths at the hand of in-laws for failure to produce a dowry. Uttar Pradesh had the highest number of dowry deaths with 2,322 cases, followed by 1,413 cases in Bihar. The NCRB reported that 23,280 persons were arrested and 6,503 persons were convicted for dowry death in 2011.

#### **TORTURE (CRUELTY BY HUSBAND & RELATIVES) :**

Domestic violence continued to be a problem, and the National Family Health Survey revealed that more than 50 percent of women reported experiencing some form of violence in their home. The NCRB reported that in 2011 there were 99,135 reported cases of “cruelty by husband and relatives,” an increase of 5.4 percent from the previous year. „Torture cases in the country have increased (99,135 cases) by 5.4% over the previous year (94,041 cases). 19.9% of these were reported from West Bengal (19,772 cases). The highest crime rate of 21.6 was also reported from West Bengal as compared to the National rate at 8.2. Although men, women and children can be abused, in most cases the victims are women. In every country where reliable, large-scale studies have been conducted, results indicate that between 16 and 52% of women have been assaulted by their husbands/partners.

#### **CONCLUSION :**

In the conclusion it can be said that in urban area women are more conscious about their rights, education and they are more empowered both economically and socially as compared with rural women. There is urgent need to create awareness in rural areas about the rights, education and government services, and schemes for improvement of their status which is provided specially for

women. There are various laws have been made by the legislature in the interests of women. The need of the hour is for the women to realize their rights and be vigilant. Women are the present and the future of India. But today in the world of the 21st century, women have attained a remarkable position in every field and their life style is improved, they are in no way inferior to men. Women have also started reaching out to state agencies for redressal and justice. India has a remarkable history with women from being the Prime Minister to the Governor and then to the President. Women are now able to doctors, lawyers, and top bureaucrats. Even in business they are occupying high positions. Women are in police force, air force and even scaling the Mount Everest is not beyond their capacity. High character and moral strength would make the society courageous and free from anti- social activities.

**REFERENCES :**

1. Crimes in India – 2010, NCRB, Ministry of Home Affairs.
2. Coomaraswamy, Radhika, (2005), „Human Security and Gender Violence , Economic and Political Weekly Vol. 40, No. 44/45 (Oct. 29 - Nov. 4, 2005).
3. Ministry of Home Affairs, Government of India, Indian Penal Code, New Delhi, 2013.
4. NCRB, (2011), Crime in India: Statistics-2011, National Crime Records Bureau, Ministry of Home Affairs, Government of India, New Delhi.
5. Naseem Ahmad Khan, ( 2013) Women Security and Legal Safeguards in India, Journal of Business Management & Social Sciences Research (JBM&SSR), Volume 2, No.4, ISSN No: 2319-5614.
6. Poonam Dhandra. 2012. Status of Women in India. RBSA publications, Pg – 1-14.
7. Prajanya Trust, (2010) Gender Violence in India: A Prajnya Report 2010, Prajanya Trust, Chennai.
8. Patel, C.L.,(1996), „Empowerment of Women and Law , Central India Law Quarterly, Vol. IX: IV, New Delhi.
9. Shashi, Krishan. July 1, 2008. Indian Democracy and Women s Human Rights, Madhya Pradesh Journal of Social Sciences.

10. Shayan Javeed and Anupam Manuhaar , (2013), Women and Wage Discrimination in India: A Critical Analysis, International Journal of Humanities and Social Science Invention, Volume 2 Issue 4, ISSN (Online): 2319 – 7722.
11. United Nations Department of public Information DPI/1772/HR – February 1996.
12. Waghmode R.H., (2013) "Domestic Violence against Women: An Analysis", International Research Journal of Social Sciences, Vol. 2(1), ISSN 2319–3565.
13. The constitution of India, Published by Govt. of India, 9<sup>th</sup> Nov.,2015.



# **Children Rights in Indian Constitution and Its Violation**

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**M.Sc. PHYSICS (MORIGAON, ASSAM)**

## **ABSTRACT :**

In order to live with dignity certain basic rights and freedoms are necessary, which all Human beings are entitled to; these basic rights are called Human Rights. Human rights demand recognition and respect for the inherent dignity to ensure that everyone is protected against abuses which undermine their dignity, and give the opportunities they need to realize their full potential, free from discrimination. There are so many human rights such as woman right, children right etc. but in our seminar paper we briefly discussed about the children right. There are so many children rights such as right to free and compulsory elementary education for all children in the 6-14 year age group, right to be protected from any hazardous employment till the age of 14 years, right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength etc. But such kind of children rights are how much applicable and the violation like Female Foeticide and Infanticide, Trafficking in Children, Right to Education, Child Labour, Child Marriage etc. against Indian children in our society are also discussed. Government should try to take initiatives. Government should try to take initiatives. We focus on the violations and discuss here such kind of way to develop the status of the Indian children.

## **INTRODUCTION :**

### **WHAT IS HUMAN RIGHT IN INDIAN CONSTITUTION :**

In order to live with dignity certain basic rights and freedoms

are necessary, which all Human beings are entitled to; these basic rights are called Human Rights. Human rights demand recognition and respect for the inherent dignity to ensure that everyone is protected against abuses which undermine their dignity, and give the opportunities they need to realize their full potential, free from discrimination.

#### **WHAT IS CHILDREN RIGHT :**

All people under the age of 18 are entitled to the standards and rights guaranteed by the laws that govern our country and the international legal instruments we have accepted by ratifying them. A right is as an agreement or contract established between the persons who hold a right (often referred to as the "rights-holders") and the persons or institutions which then have obligations and responsibilities in relation to the realization of that right (often referred to as the "duty-bearers".) Child rights are specialized human rights that apply to all human beings below the age of 18.

**Children's rights** are the human rights of children with particular attention to the rights of special protection and care afforded to minors. The Convention on the Rights of the Child(CRC) of 1989 defines a child as any human person who has not reached the age of eighteen years. Children's rights includes their right to association with both parents, human identity as well as the basic needs for physical protection, food, universal state-paid education, health care, and criminal laws appropriate for the age and development of the child, equal protection of the child's civil rights, and freedom from discrimination on the basis of the child's race, gender, sexual orientation, gender identity, national origin, religion, disability, color, ethnicity, or other characteristics. Interpretations of children's rights range from allowing children the capacity for autonomous action to the enforcement of children being physically, mentally and emotionally free from abuse, though what constitutes "abuse" is a matter of debate. Other definitions include the rights to care and nurturing. "A child is any human being below the age of eighteen years, unless under the law applicable to the child, majority is

attained earlier"<sup>[1]</sup> [Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force Sept. 2 1990]. The field of children's rights spans the fields of law, politics, religion, and morality.

### CONSTITUTIONAL RIGHTS TO CHILDREN :

The Constitution of India guarantees all children certain rights, which have been specially included for them. These include:

➤ Right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A).

➤ Right to be protected from any hazardous employment till the age of 14 years (Article 24).

➤ Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e)).

➤ Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment (Article 39 (f)).

Besides these they also have rights as equal citizens of India, just as any other adult male or female:

➤ Right to equality (Article 14).

➤ Right against discrimination (Article 15).

➤ Right to personal liberty and due process of law (Article 21).

➤ Right to being protected from being trafficked and forced into bonded labour (Article 23).

➤ Right of weaker sections of the people to be protected from social injustice and all forms of exploitation (Article 46).

### CRITICAL ANALYSIS OF THE SITUATION OF CHILDREN IN INDIA:

**Right to free and compulsory elementary education for all children in the 6-14 year age group (Article 21 A).**

#### RIGHT TO EDUCATION :

The 86th Amendment to the Constitution, on the Fundamental Right to Education for the 6 to 14 years age group, has also led to the inclusion of an additional clause under article 21A that imposes a

fundamental duty upon parents or guardians to provide opportunities for education of their children/wards between the ages of 6 and 14 years. The amendment has provoked agitation and criticism from all sections across the country. Their contention is that the State is abdicating its responsibility for the provision of free and compulsory quality education that must be accessible and appropriate, both socially as well as physically. In effect, it is penalising the poor parents twice for being poor and for their inability to send their children to schools, the causes for which may be beyond their control. Lack of quality, appropriate and accessible education is one of the major reasons for children dropping-out of school. The other reasons, of course, are poverty and to some extent the need for elder children to look after their younger siblings. In the absence of a well drawn out plan to ameliorate poverty and lack of alternative childcare facilities for children who have been deliberately kept out in the amendment, the Government needs to rethink and reconsider its stand.

Education is a main tool for development of children. The ability to read and write is an essential element of human capability. If the educational scenario in the country were to be critically reviewed, it would be seen that though there has been some progress towards universalization of elementary education since independence, but for the attainment of this goal completely, there is still a long road ahead.

**Right to be protected from any hazardous employment till the age of 14 years (Article 24). And Right to be protected from being abused and forced by economic necessity to enter occupations unsuited to their age or strength (Article 39(e)).**

#### **CHILD LABOUR :**

The Child Labour (Prohibition and Regulation) Act was enacted in 1986, to specifically address the situation of child labour. However, this law is inadequate both in its understanding and the framework that it provides for dealing with the problem of child labour. By distinguishing between hazardous and nonhazardous forms of labour, and identifying certain processes and occupations from which

children are prohibited from working, it leaves out a large range of activities that children are engaged in and thus continue to be exploited and abused. The large-scale exploitation and abuse of children employed in domestic work and hotels are cases in point. On August 1, 2006, the Ministry of Labour added the following occupations to the list of hazardous occupations: domestic servants, workers in *dhabas*, restaurants, hotels, motels, tea shops, resorts, spas or other recreational centres. Bonded child labour and other extremely exploitative forms of child labour including slavery, prostitution, drug trafficking, etc. are other grey areas which require priority attention.

**Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment (Article 39 (f)).**

**CHILD MARRIAGE:**

There is legal recognition of the fact that children must not be married before they are physically and mentally ready for it. The Child Marriage Restraint Act, 1929 (CMRA) prescribes a minimum age of 21 years for males and 18 years for females. As the title of the Act suggests, it is merely a law to prevent the solemnisation of child marriages, but does not address the situation of a child who has been married off before the law could prevent it. It does little to protect children who have been married off, sometimes even before they can stand on their feet.

Government of India should try to change the situation by providing workshops, proper education, economic help etc.

**RIGHT TO HEALTH :**

Right to health is a basic human right that cascades from the right to life. The Constitution of India under Article 21 makes the right to life a Fundamental Right. Health being a key factor in a nation's growth and development, it has been a subject of national attention, public debate and Government intervention for several decades. A number of national programmes have been launched in the past to

public debate and Government intervention for several decades. A number of national programmes have been launched in the past to

control and eradicate the major diseases. While there has been success in some areas, in general, public health services have been characterized by poor performance. The burden of disease has fallen disproportionately heavily on the poor, the worst affected being children. Frequent episodes have not only caused pain and suffering to children, but also affected their growth and development and influenced performance in school. Here, it is important to remember that child survival is not synonymous with child health, and that morbidity data are also very important. Unfortunately, the collection of morbidity data is not done systematically, particularly community based data. The most widely used indicator of child survival is infant mortality rate (IMR), which measures the number of infant deaths per 1,000 live births during the year. In India, as per the latest Census, the IMR is still very high. Infant deaths (deaths below age of one year) are indicative of wastage of human life. They also reflect the state of maternal and child health services, access to them, and extent of utilisation. A target of less than 60 Infant Mortality Rate (IMR) in 2000 was set by the National Health Policy 1983. This was not achieved. The rural-urban difference in IMR is also very marked. In 2000, urban India had an IMR of 43, but in rural areas it was 74. The survival scenario is thus far more fragile in rural India where three-fourths of the population lives. Our hopes are now pinned on the revised National Health Policy of 2002. Inter-State variations in IMR are also very marked. Female IMR is also higher than the male IMR. Higher IMR among females is due to social causes related to other practices which are morbid manifestations of gender bias and female foeticide and female infanticide. The poor health and nutrition status of pregnant woman is a major contributory factor to infant mortality. Maternal malnutrition continues to be another area of concern. The health care services in the country are to be blamed for not functioning satisfactorily. The population segments worst affected are the rural and urban poor who suffer the most when the public health care system malfunctions. All this in an indirect manner impacts on the maternal health services as their reach is limited. We know that proper medical attention at delivery is a critical factor for

safe motherhood and child survival. The Universal Immunisation Programme that limped initially has now gathered some momentum and is one of the biggest preventive public child health programmes in the world. However, much still remains to be done. Similarly, the Government has visualised an elaborate primary health infrastructure in rural areas for providing preventive, promotive and curative services. However, the functioning of the primary health infrastructure has drawn flak, and its deficiencies brought out, in the evaluations by the Indian Council of Medical Research and other bodies. The poor delivery system which includes inadequate supplies, poor equipment, poor services, and malpractices have been mainly responsible for slippages in national health targets. The CSSM programme has not made a visible impact on reduction in infant mortality either. The newly conceived RCH programme seeks to ensure child survival, safe motherhood, and reproductive health care through upgradation of services at different levels. Its impact will, however, depend upon the extent to which the health care infrastructure would bring about an improved performance (Bose, 2003:135-140).<sup>50</sup> Malnutrition has been another major public health problem in the country. It has somehow escaped public visibility despite its harmful potential. In India, about half the children less than three years of age were found by the National Family Health Survey 1998-99 to be undernourished. The worst affected are the children of the rural and urban poor. Today, the prevalence of severe under-nourishment has declined, but this should not lead to any complacency. Malnutrition is often categorized as only a medical problem, but it is the outcome of several factors – socio-cultural as well as economic factors, and has important behavioural dimensions and, therefore needs to be tackled cautiously through coordinated inter-sectoral intervention strategies that are properly executed.

The violation of the rights of children has been considered in the Commission from the angle of health too. In 2000 and 2001, the Commission organised a *Workshop on Human Rights and HIV/AIDS* that was followed by a *Consultation on Public Health and Human Rights*. Both these had direct relevance to the rights of children. Later,

in the year 2004, the Chairperson of the Commission addressed letters to the Union Ministers for Human Resource Development, Health and Chief Ministers of all States/Union Territories urging them to take steps to prevent discrimination of children affected by HIV/AIDS with regard to access to education and health care. In particular, the Commission asked them to enact and enforce a legislation to prevent children living with HIV/AIDS from being discriminated against, including being barred from school.

### **RIGHT TO EQUALITY (ARTICLE 14).**

#### **VULNERABILITY OF CHILD POPULATION :**

The 2001 Census gives the total population for the country as 1,028.7 million persons. This population is expected to reach 1,264 million in 2016 which means that approximately 236 million persons are likely to be added to India's population in the current and ensuing decades. Such a massive increase in numbers will, to a large extent, offset the gains of economic development and require massive inputs for social services, civic amenities and infrastructure development. The population of States constituting the Indian Union varies considerably in size. Uttar Pradesh, the biggest State has retained its position with a population of 166 million in 2001 even after a separate State (Uttaranchal) was carved out of it in 2000. Some 18 States (Uttar Pradesh, Maharashtra, Bihar, West Bengal, Andhra Pradesh, Tamil Nadu, Madhya Pradesh, Rajasthan, Karnataka, Gujarat, Orissa, Kerala, Assam, Punjab, Haryana, Jharkhand, Chhattisgarh and Jammu & Kashmir), as per Census 2001, had a population of more than 10 million, while two States (Himachal Pradesh and Uttaranchal) had a population of more than 5 million but less than 10 million. All this indicates how critically important it is to improve the child development profile in these States if the national aggregate of child development indicators is to show a significant improvement. Currently, several States are lagging behind on social as well as economic development indicators. Given their current political and administrative situation, the position is unlikely to change much in the near future in most of these States. The children

of these States will, therefore, continue to be more vulnerable than those in most other parts of the country, especially those living in rural areas and urban slums (Bose, 2003:21-24). This situation needs to be looked into and tackled in a very concerted manner.

#### **ADVERSE CHILD SEX RATIO :**

The child sex ratio is calculated as number of girls per 1,000 boys in the 0-6years age group. In India, the 2001 Census reported a child sex ratio of 927girls per 1,000 boys, that is definitely adverse to girls. The 1991 Census had reported child sex ratio of 945 girls per 1,000 boys, which signifies that a decade later, the child sex ratio has worsened further by 18 points. Prior to the 1991 Census, this ratio had fallen from 976 in 1961, to 964 in 1971, and 962 in 1981. A stage may soon come when it would become extremely difficult, if not impossible, to make up for the missing girls. The declining child sex ratio has already started showing its ramifications in States like Punjab, Haryana, Gujarat, Delhi, Rajasthan, Maharashtra, Tamil Nadu and Himachal Pradesh. In States like Punjab, Haryana and Gujarat, this ratio has declined to less than 800 girls per 1,000 boys. The Government needs to recognize this discrimination. Girls have a right to live just as boys do. Moreover, missing numbers of either sex, and the resulting imbalance, is bound to destroy the social and human fabric.

#### **SEXUAL VIOLENCE AGAINST CHILDREN :**

Sexual violence against children is another sensitive issue in which the Commission has taken concrete measures. Pained with the plight of child victims, vis-à-vis the manner in which the issue was being reported by the media, the Commission decided to intervene in the matter in the year 1998, when a two-month campaign was launched in New Delhi in collaboration with the Ministry of Women and Child Development, UNICEF and non-governmental organisations. A mid-term appraisal of the campaign revealed that irrespective of the medium, message or location, the campaign effectively raised awareness about sexual violence against children. The respondents were however of the view that in order to further enhance awareness

among the people at large, the electronic media too would have to be involved and mobilised. As a result, the NHRC, in partnership with Prasar Bharati and UNICEF held four workshops for radio and television producers. The participants for these workshops were drawn from 20 States. It was during the course of these workshops that an idea of bringing out a guidebook for the media to address the issue of sexual violence against children emerged. Based on the deliberations of these workshops, the Commission and the Prasar Bharati, with support from UNICEF, jointly prepared *A Guidebook for the Media on Sexual Violence Against Children*. The main objective of the guidebook is to encourage media professionals to address the issue of sexual violence against children in a consistent, sensitive and effective manner, consonant with the rights and best interest of children. The Commission currently is also in the process of preparing guidelines for speedy disposal of child rape cases.

**RIGHT AGAINST DISCRIMINATION (ARTICLE 15) :  
DISCRIMINATION AGAINST CHILDREN :**

“The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”<sup>2</sup> [The Constitution of India, P-07].

The Government has adopted a policy of affirmative action towards addressing issues of socially backward groups, such as the Scheduled Castes/Tribes and the Other Backward Classes as well as the girl child. Despite these, discrimination – overt and covert – occurs in various forms. The guiding principles underpinning the Constitution of India are equality before law, equal protection to all and non-discrimination. There is affinity between the standards set by the Constitution and the standards set by Article 2 of the CRC. Equality is a dynamic concept with many aspects and dimensions and therefore cannot be confined within traditional limits. Articles 14, 15, 17, 25-28, 29 and 30 of the Constitution aims to secure social and economic justice to all as well as remove all kinds of biases. Yet, children born in the categories of Scheduled Castes/Tribes and Backward Classes including religious minorities start life with severe handicaps.

Considering that these children account for a clear majority of India's child population, it is necessary to look deeply into their problems from all angles rather than paying a lip-sympathy to them.

#### **FEMALE FOETICIDE AND INFANTICIDE :**

Faced with the widely prevalent misuse of sex determination tests to commit female foeticide, the Commission approached the Medical Council of India during the year 1995-96, to take a position on the ethical aspects of such tests. After reviewing the matter, the Council decided to suggest suitable amendments to 59 the regulations governing the code of medical ethics, in order to enable undertaking of disciplinary proceedings against errant doctors. Thereafter, the issue of 'discrimination' as a cause of human rights violations was examined in great detail in the Commission's Annual Report for 1999-2000, especially in relation to gender and caste-based discrimination. In the light of recommendations made by the CRC Committee in its concluding observations with regard to the report on children submitted by the Government of India, the Commission reiterated that there was an urgent need to ensure that free and compulsory education was provided as a fundamental right to all children until they completed the age of 14 years. It also emphasised the need for undertaking a vigorous and comprehensive national campaign against female foeticide and infanticide. During the course of regional and national consultations on *Public Health and Human Rights* that were held during 2002- 03, the Commission again took up the issue of combating female foeticide and infanticide. The issue featured again when the Commission organised a *Colloquium on Population Policy – Development and Human Rights* in January 2003. To counter this problem, the Commission has maintained that vigorous and comprehensive measures be taken by all States and Union Territories to put an end to the gruesome problem of female foeticide and infanticide.

**Right to being protected from being trafficked and forced into bonded labour (Article 23).**

**TRAFFICKING IN CHILDREN :**

Alerted by press reports to the alarming increase in child trafficking and its ramifications like commercial sexual exploitation, pornography, etc. in Tamil Nadu and Goa in the year 1995-96, the Commission issued notices to the two State Governments as well as to the Ministry of Women and Child Development, Government of India, calling for reports on the situation. Simultaneously, it also decided to have this issue considered on a regular basis by a Core Group, consisting of representatives from the National Commission for Women, the Ministry of Women and Child Development, UNICEF and selected NGOs. The Core Group reviewed the existing laws and ways of improving their enforcement; it discussed the efforts made and difficulties faced in rehabilitating children who were victims of trafficking. Besides, it pressed for greater efforts at the level of SAARC to strengthen laws as well as devise cooperative measures so as to deal with trans-border movements; and encouraged organisation of workshops. Taking into consideration the global consequences of this problem, the Commission also represented itself at the *First World Congress Against Commercial Sexual Exploitation of Children* that was held in Stockholm from 26- 31 August 1996. In the year 2001, a Member of the Commission was designated to serve as a *Focal Point on Human Rights of Women including Trafficking*. Under the guidance of the Focal Point, an *Action Research on Trafficking in Women and Children in India* was conducted along with the UNIFEM. The main objective of the Action

Research was to find out the trends and dimensions of trafficking, role of different law enforcement agencies in preventing and combating trafficking, process of rescue/recovery, rehabilitation and reintegration and the role of other national institutions and the civil society in preventing and combating trafficking. The Action Research also examined the relationship between missing persons vs. trafficking, migration and trafficking, tourism and trafficking and culturally sanctioned practices and trafficking. The report of the Action Research was released to the general public on 24 August 2004. The report has brought forth startling facts, such as children

are trafficked not only for commercial sexual exploitation but also for various other purposes. Based on the findings of the Action Research, its report has made some useful suggestions and recommendations to prevent and end trafficking that could be seen on Commission's website ([www.nhrc.nic.in](http://www.nhrc.nic.in)). Taking into consideration these recommendations as well as the recommendations of several other workshops on the issue of trafficking, the Commission has evolved a Plan of Action to Prevent and End Trafficking in Women and Children in India and disseminated to all concerned across the country. The Commission is now working on this issue along with the Ministry of Women and Child Development, Ministry of

Home Affairs and the National Commission for Women and is collectively evolving an *Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women*. Ever since the Commission embarked on the Action Research, it has also been continuously sensitizing the judicial officers, police officers, administrative officers, functionaries of Homes, NGO representatives and the civil society at large. A network of Nodal Officers, two in each State – one from the police department and the other from the social welfare/women and child development department, has been created to effectively deal with the problem of trafficking. Further, the Commission and the Ministry of Women and Child Development, Government of India in partnership with UNICEF have prepared a Manual for the Judicial Workers on Combating Trafficking of Women and Children for Commercial Sexual Exploitation. The purpose of the Manual is to sensitise the judicial officers to the actual situation of the trafficked victims and to provide them with a perspective so that they could proactively safeguard the rights of victimised women and children, through a sensitive interpretation of the law.

#### **RIGHT TO PERSONAL LIBERTY AND DUE PROCESS OF LAW (ARTICLE 21). JUVENILE JUSTICE :**

The Commission has been concerned about the plight of juveniles who come in conflict with law and those who are in need of care and protection in the country.

**SUGGESTION :**

The Government of India's 2005 National Plan of Action for Children has identified 12 key areas keeping in mind priorities that require utmost and sustained attention in terms of outreach, interventions and resource allocation.

These are:

- Reducing Infant Mortality Rate.
- Reducing Maternal Mortality Rate.
- Reducing malnutrition among children.
- Achieving 100% civil registration of births.
- Universalization of early childhood care and development and quality education for all children.
- Complete abolition of female foeticide, female infanticide and child marriage as well as ensuring the survival, development and protection of the girl child.
- Improving water and sanitation coverage both in rural and urban areas.
- Addressing and upholding the rights of children in difficult circumstances.
- Securing for all children all legal and social protection from all kinds of abuse, exploitation and neglect.
- Complete abolition of child labour with the aim of progressively eliminating all forms of economic exploitation of children.
- Monitoring, review and reform of policies, programmes and laws to ensure protection of children's interests and rights.
- Ensuring child participation and choice in matters and decisions affecting their lives.

The above key areas are quite exhaustive. It would be practical and worthwhile if along with the above, all stakeholders including the law enforcement machinery and the Government could strengthen the protective environment for children as well as address the issue of children in conflict with law. Building a protective environment for children would require strengthening of Government commitment and capacity to fulfill children's right to protection; promoting the

establishment and enforcement of adequate legislation; addressing harmful attitudes, customs and practices; encouraging open discussion of child protection issues with all stakeholders; developing children's life skills, knowledge and participation; building capacity of families and communities who are socially and economically disadvantaged; providing essential services for prevention, recovery and reintegration, including basic health, education and protection; and establishing and implementing continuous and effective monitoring and reporting. It would be meaningful if Millennium Development Goals could also be kept in mind while working towards child protection.

### **CONCLUSION :**

The term 'children in conflict with law' refers to anyone under the age of 18 who comes into contact with the justice system as a result of being suspected or accused of committing an offence. Most children in conflict with law are those who have committed petty crimes or such minor offences as vagrancy, truancy, begging or alcohol abuse. Many are trafficked girls who are being sexually exploited for commercial reasons whereby they are picked-up by the police and put behind bars. There are also some children who have been caught for their criminal behaviour on account of being used or coerced by adults. Many a times, prejudice related to social and economic status may also bring a child in conflict with the law even when no crime has been committed, or result in harsh treatment by law enforcement officials. Studies undertaken across the country, by and large, have shown that children who come in conflict with law are often treated at par with adult criminals. This kind of a situation often harms than improves a child's chances for reintegration into the society. These children too require focused attention of all stakeholders.

Last but not the least, there is need to increase the budgetary allocations with regard to children and also ensure that the entire amount allocated is spent on the child population.

**REFERENCES :**

1. Aries, Philippe. 1962. *Centuries of Childhood*, London: Jonathan Cape.
2. Bose, A.B. 2003. *The State of Children in India*, New Delhi : Manohar Publishers.
3. Department of Women and Child Development, MHRD, GoI Annual Reports from 1986-87 to 2004-05.
4. Department of Women and Child Development, Government of India. 1992. *National Plan of Action – Commitment to the Child*, New Delhi : DWCD, MHRD, GOI.
5. *Convention on the Rights of the Child – Country Report, India, February 1997*, New Delhi : DWCD, MHRD, GoI.
6. *Child Welfare and Development : The Historical Perspective– 1787 to 1997*, New Delhi : DWCD, MHRD, GoI.
7. *India Report on the World Summit for Children*, New Delhi: DWCD, MHRD, GoI.
8. *Convention on the Rights of the Child – India First Periodic Report 2001*, New Delhi : DWCD, MHRD, GoI.
9. *National Plan of Action for Children 2005*, New Delhi :DWCD, MHRD, GoI.
10. *The India Country Report on Violence Against Children*, New Delhi : DWCD, MHRD, GoI.
11. Dworkin, Ronald. 1977. *Taking Rights Seriously*, London : Duckworth.
12. Feinberg, J. 1966. 'Duties, Rights and Claims', *American Philosophical Quarterly*, 3, 137.
13. Freeman, Michael. 1997. *The Moral Status of Children – Essays on the Rights of the Child*, The Hague : Kluwer Law International.
14. Goldson, B. 1997. " 'Childhood' : An Introduction to Historical and Theoretical Analyses", in Phil Scraton and Contributors, *'Childhood' In 'Crisis'?*, London: UCL Press Limited.
15. Goonesekere, Savitri. 1998. *Children, Law and Justice – A South Asian Perspective*, London : UNICEF and Sage Publications.
16. Government of India. 1974. *National Policy for Children*, New Delhi: Government of India.
17. The Constitution of India, Published by Govt. of India, 9<sup>th</sup> Nov. 2015.



# **Dynamics of Judicial Activism in the Implementation of Human Rights In India— An Analytical Study**

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## **ABSTRACT :**

This paper is an attempt to focus the dynamics of judicial activism in the implementation of Human Rights in India. Judicial activism means the action of an activated judiciary in the protection of Fundamental Rights of the citizens contained in the Part-III of the Constitution of India. Fundamental Rights of the citizen are the basic or birth or natural rights. In India now a day while interpreting the Fundamental Rights of the Indian Constitution, the Supreme Court has draws from the International Declaration on Human Rights. Democratic country like India where there is a written and supreme constitution, the judiciary plays a vital role to maintain the supremacy of the Constitution. Judicial activism is a delicate exercise involving creativity. It is the process by which new juristic principles are evolved to update the existing law, to bring it in conformity with the current needs of the society and for the development and growth of law. The Constitution of India is one of the most right-based Constitutions in the world. It contains the Fundamental Rights and Directive Principle of State policy which are expanded by the judiciary on the basis of International Human Rights.

## **INTRODUCTION :**

Human rights concept deals with the basic and inalienable rights of human being. Human rights mean the rights relating to life,

liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenant. In a democratic country like India the judiciary plays an important part in the evaluation of the international Human Rights by giving various rights in the interpretation of the Constitution of India.

### **CONCEPT OF HUMAN RIGHTS :**

Human Rights are certain basic and inalienable rights which are possessed by all human being irrespective of caste, creed, sex, religion etc. Human Rights are regarded as birth rights as because no one can violate these rights. Human Rights are inalienable, inter dependent and inter related having a clear linkage with human development and both share a common vision with a common purpose.<sup>1</sup> Human Rights have to do with the all round development of the human being in harmony with that of his fellow-beings in the totality of the relations in a society.<sup>2</sup> Human Rights being essential for all round development of the personality of the individuals in the society, be necessarily protected and be made available to all the individuals.<sup>3</sup> The concept of Human Rights represents an attempt to protect the individual from injustice, biasness and oppression. In other words, we can say Human Rights protects individuals against the excess of the state.

### **DEVELOPMENT OF HUMAN RIGHTS IN INTERNATIONAL LAW:**

The concept of Human Rights can be traced to the natural philosophers like Locke and Rousseau. According to Locke man is born with a title to perfect freedom and an uncontrolled enjoyment of all the rights and privileges of the law of nature and he has by nature a power to preserve his property i.e. his life, liberty and estate against the injustice and attempts of other men.<sup>4</sup> The development of the concept of Human Rights started from the era of 1215 Magna Carta, which is the first written document relating to the Fundamental Rights of citizens. In France Declaration of Rights of Man and the Citizen 1789 declares the natural, inalienable and sacred rights of man.<sup>5</sup> Following the spirit of the Magna Carta of the British and the Declaration of the Rights of Man and citizens of

France late in 1776 USA introduced US Declaration of Independence, a Bill of Rights having constitutional status. When the Constitution of India was framed the founding father took inspiration from the Bill of Rights and incorporates all the Fundamental Rights in Part – III of the Constitution of India. The Fundamental Rights enshrined in this Part are regarded as the basic right of the citizens of India. When these rights are violated the party can get remedy under Article 32 of the Constitution of India.

The Universal Declaration of Human Rights was the first of the series of documents intended to constitute an International Bill of Rights and was followed by two Covenants- International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights. The Universal Declaration of Human Rights was adopted in 1948. These two covenants were adopted by the General Assembly on 16<sup>th</sup> December, 1966 and the Covenant on Economic, Social and Cultural Rights came into force on 3<sup>rd</sup> January, 1976. Later on the General Assembly also adopted two Optional Protocols to the International Covenant on Civil and Political Rights. The two Covenants together with Universal Declaration on Human Rights and the Optional Protocols comprises the International Bill of Human Rights which represents a milestone in the history of Human Rights.

### **THE CONSTITUTION OF INDIA AND THE INTERNATIONAL HUMAN RIGHTS :**

The Constitution of India is one of the most rights based Constitution in the world. In view of the importance of the worth of the individual and the significance of the participatory role of the citizens in governance of the nation, a Bill of Rights is incorporated in Part-III as the Fundamental Rights. When the Constitution was framed in 1950 it is worth recalling that it was only the third written Constitution of a common law country which incorporated within, a justiciable bill of rights- the other two constitution being those of the United State and of Ireland.<sup>6</sup> The constitution of India was Drafted around the same time as the Universal Declaration of Human

Rights (1948), the founding fathers of the Constitution of India captures the essence of Human Rights in its Preamble, the Part-III and Part-IV of the Constitution of India. In *Keshawananda Bharati vs. State of Kerala*<sup>7</sup> the Supreme Court observed that the Universal Declaration on Human Rights is not binding instrument in India but it is properly implemented by the founding father while they framed the Constitution of India. The Fundamental Rights incorporated in the Constitution of India are the natural rights. These rights are enforceable rights. Article 13 provides the key provision for which we can say that Fundamental Rights are justiciable. The Constitution of India entrust upon the judiciary to declare a law as void or valid which depends on the conformity with Part II of the Constitution. The constitutional remedy of enforcement of Fundamental Rights is provided in Article 32 of the Constitution of India enables a citizen to approach the Supreme Court of India directly for the enforcement of the Fundamental Rights in case of any violation thereof.

#### **JUDICIAL ACTIVISM IN THE IMPLEMENTATION OF HUMAN RIGHTS :**

Judicial activism is a delicate exercise involving creativity. Judicial activism is the process by which new juristic principles are evolved to update the existing law, to bring it in conformity with the current needs of the society and thereby to subserve the constitutional purpose of advancing public interest. The primary cause for judicial activism is the inaction of other authority. In the field of basic Human Rights, the judiciary has been consistently building new linkages of a new egalitarian democratic and free society in consonance with new universal socio-political and economic order by raising some rights as Fundamental Rights under Part –III of the Constitution of India.<sup>8</sup> Displaying the activist role, the court has gone to the extent of issuing numerous directions requiring affirmative action on the part of the state authorities and laying down new principles. The judicial activism has led to the dilution of the traditional rule of ‘locus standi’ as a result of encouragement given to public interest litigation in effectively implementing the international Human Rights in India.

### **RIGHT TO SPEEDY TRIAL :**

Right to speedy trial is not mentioned as a specific Fundamental Right Constitution of India. In the United State speedy trial is one of the constitutionally guaranteed rights. So also Article 3 of the European Conventions of Human Rights provides that every one arrested or detained shall be entitled to trial within a reasonable trial or release pending trial. Under our Constitution though speedy trial is not specifically enumerated as a fundamental rights, it is implicit in the broad sweep and content of Article 21 as interpreted by the Supreme Court in *Maneka Gandhi vs. Union of India*<sup>9</sup> in which it was observed by J. Bhagwati that the procedure visualized by Article 21 of the Indian Constitution has to be right, just and fair and not arbitrary , fanciful and oppressive.<sup>10</sup> In *Hussainara Khatoon vs. Home Secretary, State of Bihar*<sup>11</sup> the Supreme Court held the right to speedy trial a Fundamental Right is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Indian Constitution. Again in *Raghuvir Singh vs. State of Bihar*<sup>12</sup> the Supreme Court held that the right to speedy trial is one of the dimensions of the Fundamental Rights to life and liberty.

### **PRISONER'S RIGHT TO BE TREATED WITH HUMANITY :**

Article 10 of the Covenant on Civil and Political Rights lays down that all person deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

In *Chares Shobraj vs. Superintendent Central Jail, Tihar, New Delhi*<sup>13</sup> J. Krishna Iyer recognized that the right to life is more than mere animal existence. In this case the petitioner had contended that barbaric in human treatment was hurled at him and international discrimination was done with him. The Court restricted such treatment as a violation of right to life guaranteed under Article 21 of the Constitution of India.

### **RIGHT TO FREE LEGAL AID :**

Article 14(3)(d) of the Covenant on Civil and Political Rights provides that the right to be tried in his presence and to defend

himself in person or through legal assistance of his own choosing, to be informed, if he does not have legal assistance, of this right and to have legal assistance assigned to him, in any case where the interests of justice so required and without payment by him in any such case if he does not have sufficient means to pay for it.

The Indian Constitution does not explicitly provide this right as Fundamental Right. In *M.H. Hoskot vs. State of Maharashtra*<sup>24</sup> the Supreme Court took note of Article 39-A and laid down that Article 21 read with Article 39-A and 142 requires inter-alia that where a prisoner is unable to exercise his constitutional and statutory right of appeal including special leave to appeal for want of legal assistance, there is implicit in the court Article 142 read with Article 21 and 39-A of the Constitution the power to assign counsel to the prisoner provided he does not object to the lawyer named by court. It is now fairly settled that the right to legal aid and speedy trial are part of the guarantee of human rights envisaged by Article 21 of the Constitution of India.

#### **RIGHT TO COMPENSATION :**

The Covenant on Civil and Political rights under Article 9 Para 5 laid down that anyone who has been the victim of unlawful arrest or detention shall have the enforceable right to compensation.

In *Rudul Shah vs. State of Bihar*<sup>25</sup> the Supreme Court held that Article 21 which guaranteed the right to life and liberty will be denuded of its significant content if the power of this court were limited to passing orders of release from illegal detention. The right to compensation is some palliative for the unlawful acts of instrumentalities which acts of in the name of public interest and which present for their protection of power of the state as a shield.

#### **RIGHT TO PRIVACY :**

Right to privacy is contained in Article 17(1) of the International Covenant on Civil and Political Rights. It provides that no one shall be subjected to arbitrary , unlawful interference with his privacy, family, home or correspondence not to lawful attacks on his honour and reputation. But this right has not been

enumerated as Fundamental Right in Part-III of the Constitution. The issue of privacy is pregnant matter in India. It shows the lack of privacy consciousness on the part of the Indian citizens. Privacy is one of the necessary ingredient of personal liberty. Article 21 of the Constitution miraculously has been playing a major role in the safeguard of privacy as an essential ingredient of personal liberty. In State of Maharashtra vs. Madhulkar Narain<sup>16</sup> it has been held that the right to privacy is available to a woman of easy virtue and no one can invade her privacy. Again in Rajagopal vs. State of Tamil Nadu<sup>17</sup> the Supreme Court has held that right to privacy is guaranteed by Article 21 of the Constitution of India.

#### **CONCLUSION :**

Human rights are the basic rights of all human being. No one can violate these right as because these are the birth rights. For the incorporation of Human Right in India the Constitution of India incorporates the basis right as Fundamental Right in Part -III of the Constitution of India. The judiciary in India tries to enlarge these rights mention in Part -III to met the international documents on human rights. With the interpretation which we discussed , the Supreme Court exemplifies judicial creativity and sensitivity at its best level by discovery of new rights.

#### **BIBLIOGRAPHY :**

- 1 A.S. Anand, Justice for Women , Universal Law Publishing
- 2 Dr. H.O. Agarwala Human Rights, Central Law Publication
- 3 M.P. Jain, Indian Constitutional Law, Wadhwa Nagpur
- 4 J. N. Pandey, Constitutional Law of India. Central Law Agency
- 5 Judiciary in India, Prof. G. Manohaar Rao, Asian Law House
- 6 V.K. Bansal, Right to life and personal liberty in India, Deep and Deep Publication
- 7 V.S. Mani Human Rights in India
- 8 K.P. Saksena, Human Rights and the Constitution, Gyan Publishing House, New Delhi

#### **NOTES:**

1. A.S. Anand, Justice for Women , Universal Law Pub;ishing, p.6

2. V.S. Mani Human Rights in India
3. Dr. H.O. Agarwala Human Rights,Central Law Publication. p.3
4. M.P. Jain, Indian Constitutional Law, Wadhwa Nagpur P. 827
5. J. N. Pandey, Constitutional Law of India. Central Law Agency p.51
6. K.P. Saksena, Human Rights and the Constitution, Gyan Publishing House, New Delhi, p.29
7. AIR 1973
8. implementation of International Human Rights in India, by Dr. Maruthet.R., Judiciary in India, Prof. G. Manohaar Rao, Asian Law House P..232
9. AIR 1978 SC 597
10. V.K. Bansal, Right to life and personal liberty in India, Deep and Deep Publication, p.159
11. AIR 1979 SC 1360
12. (1989) 4 SCC 481
13. AIR 1978 SC 1514
14. AIR1978 SC 1548
15. AIR 1983 SC p. 1086
16. AIR 1991 SC 207
17. (1994)6SCC 632



## **Human Rights – Role of State to Protect Human Rights**

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### **ABSTRACT :**

Generally Human rights refers to the basic rights and freedom to which all humans are considered to entitle like the right to survive, liberty, expression, freedom and equality in regards law. The capacity of State to protect human rights has not kept pace with the expansion of global economic activity. As business have gained greater economic rights, access to market and mobility and the duty of the state to protect human right.

In respect of human rights, the obligation means that the state must restrain from obstruct with or retrenching the enjoyment of human rights. The obligation to fulfil means that the state must take the positive actions to give the opportunities or benefits by which human can rejoice their rights.

Role of state in protecting abuselements of human rights includes taking appropriate steps to prevent, to investigate, to punish and redress the abuselements through effective policies, legislation, regulations and adjudication. It includes a degree of measures, from providing effective guidance to business enterprises on how to respect human rights, to enforcing laws requiring business enterprises to respect human rights and it also includes that the state uses to influence the conduct of regulators, buyers, investors or owners.

Furthermore, to comply with human rights obligations, a state must establish foundations for the rule of law in which some

institutions must be guaranteed. E.g. legislative institution, which represents the will of the people, and is chosen by free elections held at reasonable intervals under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives, Another example is an executive branch that does not abuse discretionary power and wants to nourish the indulgence of human right by all under arbitration.

### **INTRODUCTION :**

The concept of human rights, in its present content, is a product of a long process of evolution. Essentially, human rights are an integral part of human life since the possession of these rights distinguishes human beings from other species. Human rights are those fundamental rights that every man and woman should be deemed entitled by virtue of having been form a human being locating any part of the world.

One of the major achievements of the United Nation Organization in the field of human rights was the adoption of the Universal Declaration of Human Rights (UDHR) by the General Assembly on 10<sup>th</sup> December 1948. Article 1 of the United Nations says – “All Human beings are born free and equal in dignity and right. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Every year the 10<sup>th</sup> December is celebrated as the Human Rights Day all over the world.

The charter for the UDHR has 30 articles. There is growing tendency among the people of the world to secure for themselves all the rights necessary for the enrichment and development of Human Personality.

### **CATEGORIES OF HUMAN RIGHTS :**

Human rights constitute various categories of rights. They are–

- i. Social or Civil Human Rights
- ii. Political Human Rights
- iii. Economic Human Rights
- iv. Cultural Human Rights

> Social or Civil rights are related to life, liberty and property

which help to lead civilized life for the individual as well as nations.

> Political human rights the bedrocks of democratic societies. The Universal Declaration of Human Rights include such right as (a) right to nationality and right to asylum (b) right to freedom of peaceful assembly and associations (c) Right to freedom of movement and right to freedom of opinion and expression.

> Economic human right includes (a) right to social security (b) right to work (c) right to rest and leisure and right to a standard of living.

> Cultural human right : Article 27 of the Universal Declaration of Human Rights provides that "Everyone has the right freely to participate in the cultural life of the community to enjoy the arts and to share in scientific advancement and its benefits."

### **VIOLATIONS OF HUMAN RIGHTS**

Human rights are violated in different forms and manner, and the results of acts or inactions are not merely controlled by the state mechanisms i.e. police, military or armed forces. The most glaring instance is the government of Uttar Pradesh claiming sovereign condonation to reject its liability for the excesses committed by the police personnel of UP against the peaceful demonstrators of **Uttarakhand movement on Oct 2, 1994** when the Nation was celebrating the birth anniversary of Mahatma Gandhi, the proponent of non-violence. In that incident which flourishes the nation's conscience, where 24 persons were reportedly killed in the cold blood by the police, seven women were raped and 17 others were sexually maltreated.

Allahabad High Court declared that it could award compensation in a case of human rights violations by rejecting the proposition of sovereign condonation and to advance the cause of human rights and giving more teeth to the constitutional guarantee for a right to live with dignity (Article 21) and ordered the state to pay Rs. 10 lakh as compensation for each case of death and rape, Rs. 5 lakh for each case of molestation, between Rs. 50,000 to Rs. 2.5 lakh for each case of injury or permanent disability and Rs. 50,000 for each case of illegal detention.

There are various violations occurred in our state. Among those, the incident took place at **Pengeri in Tinsukia** is most prominent one. According to the report, three army jawans were killed in an alleged encounter with suspected militants of the United Liberation Front Assam in Upper Assam on Saturday morning of **19<sup>th</sup> November, 2016**. The incident occurred during an army operation carried out in the early hours inside the Burhi Dihing reserve forest in Tinsukia district. Sources said that the militants had planted an improvised explosive device (IED) on the road and the IED exploded. Then the militants fired indiscriminately upon the vehicle from both side of the road of forested areas. **On 26<sup>th</sup> November, 2016**, anti-insurgency operations were intensified along the Assam, Arunachal Pradesh border in Charaideu district. Security forces also arrested two men who were linked with the ULFA in Charaideu. As a result, villagers fled their homes fearing harassment by security forces and people of nearby places are mentally tortured or disturbed for all these recent attacks. So, in this case, human rights are profoundly affected.

Another case of violation is occurred on **8<sup>th</sup> Dec, 2016**. Golap Konwar, an assistant Sub-Inspector posted at Basistha Police Station, openly fired on two persons in an area of Guwahati. According to the report, the incident took place when Konwar entered into an altercation with the driver and the handyman of an excavator and the matter took an worst condition after Konwar allegedly opened fire on them. In this case Konwar has no authority to fire on the two civilians though he is an ASI. Hence, the human right is badly violated in such a case.

Unconstitutional triple talaq violates rights of Muslim women. **On 8<sup>th</sup> December, 2016 Allahabad High Court** said that the practice of triple talaq among Muslims is unconstitutional and it violates the rights of women and along with this the High Court said that no personal law board is above the constitution. The court did not pronounce on legality of triple talaq saying that the Supreme Court is seized of matter. Normally we can say that the practice of triple talaq is an illegal act and demeaning and it violates the women rights in Muslim religion.

As per the study conducted by UTAH, a child rights agency in Guwahati, from 1 to 18 years age group of people in the poverty line have very limited education and health care.

Slum children are victims of various kinds of abuse and violence and are involved in some kind of labour. The unorganized conditions in which these children live impede their healthy growth and development that leads to various kinds of violations. According to GMC survey conducted in 2014, there are 217 slum areas in the notified categories and non notified categories in Guwahati. The population of these slum areas has been estimated to be approximately 1,39,296. The number of households has been estimated to be around 26,090.

Moreover, children cannot be apart from suffering in violence against human rights. Assam has in the recent years emerged as one of the 'hotspots' for child trafficking. Many placement agencies are earning huge profits by bringing in children from the state to the capital and also sending them to other cities.

#### **ROLE OF STATE :**

The role of governmental and non-governmental organizations in securing Human rights focuses on the role of both governmental and non-governmental organizations in protecting the rights of human.

The adoption of the Universal Declaration of Human Rights by the U.N.O. in 1948 had tremendous impact on the authors of the Indian Constitution. The founding fathers of the constitution incorporated in part-III of the constitution provisions relating to equality, freedom, religion, education etc. and empowered the Supreme Court and the High Court to issue writs for the enforcement of these rights which are known as fundamental rights. In 1993 the National Human Rights Commission (NHRC) was constituted. NHRC has been doing remarkable jobs since its establishment.

Following are the functions and powers of NHRC. It in the duty of the commission

> to enquire suo motto or on a petition presented to it for violation of human rights.

> to intervene in any proceedings involving any allegation of violation of human rights pending before a court with the permission of such court.

> to visit any jail or any other institution and under the control of state govt. where prisoners are detained, to see the living conditions of the inmates and make recommendation thereon.

> to review the safeguards provided under the constitution or any law in force for the protection of human rights and recommend necessary remedial measures.

In discussing the role of governmental body that is the Assam State Commission for Women (ASCW), it has been found that most of the members of Assam State Commission are taken from ruling party. The nature of the Assam State Commission is just like any counseling body which can suggest step to government, examines policies and cases, takes up research work in women and like this and making ASCW more functional, members should be appointed with a particular percentage of representatives from different women organizations.

In Assam nonprofit organizations are part of social development and welfare of the state people. NGO in Assam has been actively working for genuine social development programmes and welfare activities of urban and rural communities. These organizations are functioning for child education, child welfare and child rights also. On 7<sup>th</sup> December, 2016, NGO named Softsid has found out small two girls and two child labour from Bihar and Delhi. According to the report, the girls are handed over to their parents and the two childs are handed over to orphan house after finding out. Like this case, the NGOs earn some achievements in protecting human rights.

#### **CONCLUSION:**

It should be mentioned of the responsibilities of foreign missions. When governments wish to make their views in the field of human rights known abroad, they usually rely on their missions in the first instance. The instrument of demarches is one option,

but informal measures are also frequently used. Foreign missions are especially important in relation to human rights dialogue with the host government: a dialogue can be conducive to improvement as it is often regarded as a constructive approach by the countries concerned. The dialogue may also extend to other layers of society as bilateral missions can maintain contacts with local human rights *defenders*. Moreover, missions are a source of first-hand information on the human rights situation in a given country as monitoring and reporting on human rights issues is one of the regular tasks of missions.

Finally, it should also be mentioned of the special role played by the permanent missions with the international for a dealing with human rights. Many states have missions in Geneva, New York, Vienna and Strasbourg and are actively involved in the human rights discussions taking place in the for a headquartered there.

**REFERENCES :**

1. Human Rights for twenty first century – by Jaytilak Guha Roy.
2. Historical Perspective and Challenges ahead, human rights in India – by Amit Bhattacharyya & Bimal Kanti Ghosh.
3. Protidin Newspaper – 26<sup>th</sup> November, 2016
4. 'The Assam Tribune' Newspaper, 8<sup>th</sup> Dec, 2016, page 4.
5. 'The Assam Tribune' Newspaper, 19<sup>th</sup> November, 2016 & 20<sup>th</sup> November, 2016.



# Human Rights and Role of Media

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**“To deny people their human rights is to challenge their very humanity.”**

**- Nelson Mandela**

## **ABSTRACT :**

Media is regarded as the fourth estate of democracy. It has been entrusted with the responsibility of guarding the rights of the people. Thus its role is pivotal. The role of the media in safeguarding and promoting human rights is contained in the Article 19 of the Universal Declaration of Human Rights (UDHR), as also in the Indian Constitution. In fact, media is well recognized for its role in protecting and upholding human rights in the past, present and so it will in the future also. Our authority in many a time is compelled to act promptly on various issues of the people due to effective media reports. There is widespread existence of ignorance about human rights in the society. Media played key role in attracting people's attention towards human rights. Proper knowledge of the human rights can also have a positive impact on curbing human rights violation activities.

However, there are instances of promoting violation of human rights by media or its complete failure to discharge duties conferred on it. It becomes human rights offender rather than defender. This paper aims at critically examining some of such issues like media trial, biasness, etc.

**KEY WORDS:** *Human Rights, Human Rights Defender, Democracy, Indian Constitution, Media Trial.*

**INTRODUCTION :**

Historically, media applauded worldwide for its role played for upholding human rights. It is regarded as the fourth estate of any democracy. A strong, vibrant and unbiased media network is must for a nation with tremendous diversity, socio-economic, political status and historical background like India. The Constitution of India provides for Fundamental rights which includes Freedom of Speech and Expression in Article 19, is also believed to include freedom of press, since it is nowhere mentioned in the Indian Constitution. In its report on human rights in India during 2010, Human Rights Watch stated India had "significant human rights problems". So it is after all media to come forward to bring such thing into limelight.

In India, in fact, media is well recognized for its role in protecting and upholding human rights in the past, present and so it will in the future also. Our authority in many a time is compelled to act promptly on various issues of the people due to effective media reports. There is widespread existence of ignorance about human rights in the society. Media played key role in attracting people's attention towards human rights. Proper knowledge of the human rights can also have a positive impact on curbing human rights violation activities. Acting chairperson of NHRC Justice Cyriac Joseph, speaking at a national seminar in Dr. Babasaheb Ambedkar College of Law, Nagpur, on September 14, 2015, says, "Society, media and human rights are interlinked to each other. They are the common thread in protecting the human rights. The essence of human rights is to secure the dignity of an individual." However, there are instances of promoting violation of human rights by media or its complete failure to discharge duties conferred on it. It becomes human rights offender rather than defender.

**AREA OF STUDY :**

Though the subject has universal applicability, in this study

is carried on the basis of the rights enshrined in the Indian Constitution.

#### **METHODOLOGY :**

The present study adopted basically descriptive method of research. The study is mainly based on the secondary sources of data collected from the relevant books, journals, periodicals, records and websites.

#### **OBJECTIVES :**

In this paper, an endeavor has been made to examine certain instances where media failed to discharge its duties effectively along with the issues like media trial, biasness of media, etc.

#### **MEDIA AS OFFENDER OF HUMAN RIGHTS :**

Media trials pertains to its tendency to run parallel investigations during the Court proceedings, has adverse impact on the fundamental freedom of speech and expression as well as the right to privacy. Tyagi and Grover, 2015, "Trial by media is a phrase used to describe the impact of television and newspaper coverage on a person's reputation by creating a widespread perception of guilt regardless of any verdict in a court of law." India, at present, does not have an independent statute protecting privacy; the right to privacy is a deemed right under the Constitution. The right to privacy has to be understood in the context of two fundamental rights: the right to freedom under Article 19 and the right to life under Article 21 of the Constitution.

Hotnhit News, June 09, 2014, reports that trial by Indian media has again been questioned by civil society and rights organisations of Andhra Pradesh. In a joint petition submitted by All India Forgotten Women's Association (AIFWA), Andhra Pradesh Mothers-in-law Protection Association (APMPA), Save Indian Family Foundation (SIFF), All India Men's Welfare Association (AIMWA) with the A.P. State Human Rights Commission, the organisations have alleged that media telecasts/publishes lies and half-truths about family disputes between husbands and wives in the name of

news and, even, resorts to defamation of husbands and their family members by calling them criminals, crooks, cheats, frauds, blood-thirsty demons, money-hungry wolves and similar terms merely based on the self-serving statements of a complainant wife, thus causing damage to the dignity of accused persons. The organisations, through their petition, have urged the Andhra Pradesh State Human Rights Commission to render justice to victims of media malice.

>In the **Bofors pay-off case**, the High Court of Delhi observed that, "The fairness of trial is of paramount importance as without such protection there would be trial by media which no civilized society can and should tolerate. The functions of the Court in the civilized society cannot be usurped by any other authority." The Court agreed that media awareness creates awareness of the crime, but the right to fair trial is as valuable as the right to information and freedom of communication

In the **Best Bakery Case**, Gujarat, Zahira Sheikh, the key witness, was a victim of excessive media coverage possibly endangered her life and her turning hostile. The Supreme Court of India in *Zahira Habibullah Sheikh v. State of Gujarat* explained, "a fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial claim. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated."

Urvashi ,2012, media has now reincarnated itself into a 'public court' which can also be referred as "Janta Adalat" and has started interfering into court proceedings so much so that it pronounces its own verdict even before the court does. It completely overlooks the vital gap between an accused and a convict keeping at stake the golden principles of '**presumption of innocence until proven guilty**' and '**guilt beyond reasonable doubt**'.

In the **Jessica Lal murder case**, the media played as facilitator of justice. The media whipped up public opinion against the accused and held him guilty even when the Trial Court had acquitted the accused. The Supreme Court, India, commented

“Presumption of innocence of an accused is a legal presumption and should not be destroyed at the very threshold through the process of media trial and that too when the investigation is pending.”

Satapathy, “Usually, however, it is the press whether it be the printed media or the electronic media, that seizes on a particular case and catapults it into a national story. Say for example the famous Arushi and Hemraj Murder Case the Supreme Court of India on 6<sup>th</sup> August 2008 sharply criticized the media for acting as if it was a super investigating agency and for tarnishing the reputation of the doctor couple (Rajesh and Nupur Talwar) whose daughter Arushi Talwar had been murdered.”

In *Saibal Kumar v. B.K. Sen* case, the Supreme Court tried to discourage the tendency of media trial and remarked, “*No doubt, it would be mischievous for a newspaper to systematically conduct an independent investigation into a crime for which a man has been arrested and to publish the results of the investigation. This is because trial by newspapers, when a trial by one of the regular tribunals of the country is going on, must be prevented. The basis for this view is that such action on the part of a newspaper tends to interfere with the course of justice, whether the investigation tends to prejudice the accused or the prosecution.*”

In *M.P. Lohia v. State of West Bengal* case, the Supreme Court strongly deprecated the media for interfering with the administration of justice by publishing one-sided articles touching on merits of cases pending in the Courts.

Justice N. Santosh Hedge said that the facts narrated therein are materials that may be used in the forthcoming trial in this case and that this type of article appearing in the media would certainly interfere with the administration of justice. He remarked- “*We deprecate this practice and caution the Publisher, Editor and the journalist who are responsible for the said articles against indulging in such trial by media when the issue is sub-judice. Others concerned in journalism would take note of this displeasure expressed by us for interfering with the administration of justice.*”

### **CONCLUSION AND SUGGESTIONS :**

Though Media is the fourth pillar of Indian Democracy and under Article 19(1)(a) of the Constitution it has a fundamental right, but at the same time it cannot be allowed to transgress its domain under the garb of freedom of speech and expression to the extent as to prejudice the trial itself and the time has come to legislate to control the unfettered power of media.

Indian Constitution has wide power to impose restriction and control the power of media under article 19(2) of the Constitution. Right to fair trial of the accused has to be safeguarded at any cost. One should take into consideration that judges are also human beings and not robots who are pre-programmed to do certain things in a specified way. Too much hype leads to change of the thinking of the judges, sometimes the judgment becomes biased and total justice is not awarded.

We need strong laws on this subject especially some guidelines in how far the media can extend its right to expression in relation to the privacy of a person. That is, a clear distinction mark is essential in this tug of war between Right to freedom of press and the Right to privacy, both of which are constitutionally guaranteed rights. Only the laws will not help, strong implementation is also necessary. The media which creates so much awareness in the society should also create awareness among itself as far as their working ethics is concerned. There is no question about the labour and determination which they put in their work to morally raise the society, but this morality graph should also be binding upon them to garner the strong democracy which is the need of the hour. Earlier, the media was only an aid to the society, but now, it has itself gone a parabolic transition and is a recognized society itself. Famous journalist Mr. Rajdeep Sardesai said: "*I guess journalists are more feared today, but sadly less respected. We are more arrogant, less ethical*". But this scenario can be changed if the media people become a little more tolerant and dedicated towards their profession with honesty and integrity as they have this huge responsibility of showing both the concave and the convex sides of the society.

**REFERENCES :**

1. Pinto, Anil, 2007, Human Rights and Media [http://www.academia.edu/1784974/Human\\_Rights\\_and\\_Media](http://www.academia.edu/1784974/Human_Rights_and_Media)
2. hotnhit NEWS, June 09, 2014, Trial by Indian Media is violation of Human Rights, allege Rights Organisations of Andhra Pradesh.
3. Nagpur Today, September 15, 2015, Seminar on 'Indian Society, media and challenges of rights inaugurated
4. Tyagi, Isha and Grover, Nivedita, 2015, Media Trials And The Rights Of The Accused, ACADEMIKE, January 16, 2015 by raghavi
5. Urvashi Singh, 2012, "Trial by media a threat to administration of justice" <http://www.lexology.com/library/detail.aspx?g=52a59428-9ce1-4fe5-8af9-f10750d37ca4>
6. Santrupt Satapathy, "Trial by media" <http://www.lawinfowire.com/articleinfo/trial-by-media> .
7. Sidhartha Vashisht, Manu Sharma v. State (Nct Of Delhi), Available at <http://www.indiankanoon.org/doc/1515299/>
8. (2005) 2 SCC 686
9. (1961) 3 SCR 460
10. Crl.Misc.(Main) 3938/2003
11. Legal India, April 23, 2014, Privacy and the Media: A Critical Analysis <http://www.legalindia.com/privacy-and-the-media-a-critical-analysis/6/>
12. [https://works.bepress.com/ratnesh\\_dwivedi/3/](https://works.bepress.com/ratnesh_dwivedi/3/)
13. [http://zeenews.india.com/news/nation/media-role-in-promoting-human-rights-culture-important-balakrishnan\\_897887.html](http://zeenews.india.com/news/nation/media-role-in-promoting-human-rights-culture-important-balakrishnan_897887.html)
14. <http://www.thehindu.com/news/cities/Madurai/quotVital-role-for-media-in-exposing-human-rights-violationsquot/article12543488.ece>
15. <http://indianexpress.com/article/india/india-news-india/pok-india-unhrc-human-rights-violation-3031213/>
16. <http://religious-freedom-report.org/?gclid=CMymyN-90NACFQYkaAodaNIObw>
17. <http://hotnhitnews.com/Trial-by-Indian-media-is-violation-of-human-rights-allege-rights-organisations-of-Andhra-Pradesh-Hotnhitnews-Odisha-India-08116072012.htm>

18. <http://www.nagpurtoday.in/seminar-on-indian-society-media-and-challenges-of-human-rights-inagurated/09150739>
19. <https://books.google.co.in/books?id=lwTn9IGILyYC&pg=PA261&lpg=PA261&dq=human+rights+violation+and+indian+media&source=bl&ots=OrgTCfZoue&sig=-9jTPLQd-ltyCC75eO-XcogQy7E&hl=en&sa=X&ved=0ahUKE-wi0gtbavdDQAhXBv4-8KHR8yBhQ4ChDoAQg3MAI#v=onepa>
20. <http://www.endslaverynow.org/act/educate/human-rights-and-slavery?gclid=CPjniurD0NACFDCGaAodSkIIIg>
21. <http://www.endslaverynow.org/act/educate/human-rights-and-slavery?gclid=CPjniurD0NACFDCGaAodSkIIIg&q=human%20rights%20violation%20and%20indian%20media&f=false>
22. <http://www.legalservicesindia.com/law-india/Human-Rights-law-in-India.htm>
23. <http://www.alternet.org/civil-liberties/14-shocking-global-human-rights-violations-2013>
24. <http://thediplomat.com/2015/10/exposed-indias-silence-over-human-rights-violations-in-kashmir/>
25. <http://www.ohrc.on.ca/en/students%E2%80%99-handouts/case-study-1-darlene>
26. <http://www.ourhumanrightsstories.org.uk/case-study>
27. [https://www.jstor.org/stable/41393573?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/41393573?seq=1#page_scan_tab_contents)
28. <http://nhrc.nic.in/cases.htm>

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# Right to Education: A Challenge to Our Society

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## **ABSTRACT :**

Education is a medium/process of receiving or giving systematic instruction; especially at schools, colleges or university.

India is a country which provides for a constitutional guarantee to free and compulsory education, as the Right to Education Act, came into force on 1<sup>st</sup> April'2010 after 62 years of Independence and it has made free and compulsory education a fundamental right of every child in the 6-14 age groups.

Thus, the enforcement of this Right has made it a joint responsibility of both the central and state government to provide Right to Education in every doorstep of the Indian community by all means.

The paper which we are going to present will begin with a historical perspective outlining the salient features of the Act and then we will throw a comparative analysis of the 'challenges' sustaining in our state especially in SSA schools and slums and lastly, we will suggest ways to overcome them.

**Keywords :** *Right to education, SSA, Slums.*

## **INTRODUCTION :**

The Right to education Act comes enforced in India on 1<sup>st</sup> April' 2010. With this India became one of the 135 countries to make education a fundamental right to every child.

India being a democratic has given many right and privileges for the welfare of the citizens. Many Acts has been enforced till date for the upliftment and betterment of its people. One of the most influential Acts which the Indian constitution has incorporated is the Right to Education Act which guarantees to give free and compulsory education as a fundamental right to every child in the 6 to 14 age group.

The Central and the State government of India makes a joint responsibilities in providing free and compulsory education to all children at their door step by all means.

Our paper will highlight the historical perspective outlining the features of the act, then we will throw a comparative analysis of the challenges sustaining in our state especially in SSA schools and its influence in slums areas. Further we will suggest ways to overcome these flaws.

#### **HISTORICAL PERSPECTIVE :**

At the time of independence the scenario of the Indian educational system was very different from that of today. It was not only quantitatively small but gender and regional disparity greatly paralyzed the entire social as well as educational system. As a result it became a challenge to provide compulsory education to all the section of children in the society. Accordingly Article 45 of the Indian constitution came as a boon to the society for universalizing education for all children. The main aim of this was to provide education to all section of children with special attention given to economically deprived and under privileged section of the population who otherwise got boycotted due to "Segmental division of the society".

But due to inadequate execution, this constitutional provision was at stake till SARVA SHIKSHA ABHIJYAN was later implemented by the government in the year 2002. Free and compulsory elementary education was made a fundamental right under Article 21A of the Indian constitution in December'2002 by the 86<sup>th</sup> Amendment. A constitutional bill "Right of Children to free

and Compulsory education bill “was drafted in 2005 to bring SSA into action. Later this bill was revised and turned into act in 2009 and was enforced on 1<sup>st</sup> April’2010.

As India during that time consisted of large numbers of dropouts and out of schools children, making the majority of population illiterates. So Right to Education Act brought A RAY OF HOPE to the entire society.

### **THE FEATURES OF THE ACT :**

The Right to Education Act is a detailed and comprehensive piece of legislation which includes provision related to schools, teachers, curriculum, evaluation, assessment and specifies division and responsibilities of all concerned. Main features of the Act are as follows:

1. Every child from 6-14 years of age shall have the right the free and compulsory education in a neighborhood school till completion of elementary education.

2. Private schools shall provide 25% reservation for weaker section and economically disadvantage groups in the admission

3. All schools except government schools are required to meet the specified norms and standards within 3 years to avoid cancellation of their recognition.

4. The Act calls for a fixed pupil/teacher ration i.e.30:1

5. The Act mandates improvement in quality of education.

6. Both Central and State government will ensure financial help.

### **LITERATURE REVIEW :**

In the Article “Dropout to learners: The challenge of the Right to Education Act ‘2009”, Vemala Veeraghavan says about the actual impact on the ground of the RTE Act. She also looked at the research data on dropout and make suggestion for effective implementation of the Act and the achievement of the objectives of providing quality education to all children.

The Urban and Review Book by Stephen Ball and Geofs Wekitty

is concerned with the impact and effect of the education Reform Act.

The NCF of 2005 focused on learning without burden, to develop child centered approach and to promote universal enrollment and Retention up to age of 14 to inculcate the feeling of oneness and unity in the student curriculum to strengthen National identity to make Indian education irrespective of caste, creed, religion and sex and provide them with a standard curriculum of inequality, quality and quantity.

#### **FINDING OF THE WHOLE STUDY :**

We had conducted a field study in Guwahati as an urban city and Nagaon as a rural area. During the field work, we visited a few slums areas and its nearby SSA schools in both the areas. In the study even though few respondents and some authority were not cooperative with us, still we managed to draw out some finding to our study. The findings are as follows:

##### **> INCREMENT IN LITERACY RATE :**

From both the study of urban and rural we found that SSA is a great success in liberating every section of the society, especially the slums. The provisions of providing text books, uniforms and other allowances is itself a motivating factor in enrolling students in these schools. Thus, by 2020 there will be no person remaining illiterate. UTSAV VIDYA ARAMVO conducted in 1<sup>st</sup> week of January,2015 has helped in increasing awareness especially in rural areas.

##### **> AWARENESS OF PARENT :**

A very interesting factor we can across even though the parents were illiterate, but still they dream that their child will be an educated citizen of our country. They almost provide all the necessary amenities according to their capacity for educating their child in the best possible way. A mother even said that, if the schools provide proper education to her daughter then she does not need any facility such as mid day meal etc.

The slum people are also conscious about the quality of education in the school.

➤ **OVERCOMING OF GENDER DISCRIMINATION :**

As there is a generalized view that boys are always considered being the bread earners and the girls the care takers. But this is a notion of today's time. As we saw that the enrollment of girls in some school are more than boys. Schemes like Kasturba Gandhi and the SSA, has encouraged more girls to come to school.

➤ **PERSONAL PROBLEMS :**

During the study we found both the urban as well as the rural problems were the same in the slum. Generally they face acute financial crisis including some families issues which paralyse standard of living making them unable to access to education.

➤ **LOOKING AFTER FAMILY AND WORKING FOR LIVELIHOOD:**

This is also faced by families of both the rural and urban areas. A small boy a 12 years said that even though he was enrolled in school, but still he had to leave and engage in rag picking in order to look after his only mother. Another instance is that a girls admitted in school had to leave school in order to look after her younger brother, she had to leave school as her mother goes out to work.

➤ **MIGRATORY NATURE OF THE PEOPLE :**

This mainly could be seen in Guwahati. Different people migrate to Guwahati from neighboring state and area in search of blue collar or other menial jobs, thus setting in slums. As a result, slums areas face much government eviction; making them homeless and jobless. So the children those who were previously enrolled in the nearby school have to migrate into any other area. Thus the distance between his/her previous school and the new home increases which further was a hindrance for his study.

But this situation is less in Nagaon slum areas

➤ **DISTANCE OF THE SCHOOL :**

This is again the problem of both the rural and urban areas.

This is due to mushroom growth of Elementary private school rather than the Government or SSA school. For instance a lady residing in Bamunimidam near railway track said that due to long distance and the danger of crossing railway track, she was not ready to admit her son to the SSA school that was situated on the opposite side of the track. So inspite of weaker financial condition she had to put her child in a private school.

➤ **PEER FACTOR :**

This is the problem of both the rural and the urban areas. Parents of both the place have compliant about that how their children have been influenced by peer groups and thus indulging in bad habits. So delinquency is mostly prevailed in these areas which their schools are unable to control.

➤ **INFRASTRUCTURES FACILITIES :**

The infrastructures facilities of the SSA school around Nagaon area are good. But in some cases we saw unnecessary construction of oversize auditorium halls, rooms and cycle stands in the schools which is disproportionate to the number of student enrolled in the school. But the case is opposite in some schools of Guwahati. There is lack of toilet, playground, library, indoor game, auditorium etc. In one case some parents complained that students especially girls are sent home to do toilet as they lack proper toilet facility.

➤ **IMPROPER EVALUATION AND TEACHING SKILLS :**

Teachers are not well trained in both rural and urban areas. Surprisingly, we came across some evidence where the class work copies were wrongly checked. They only emphasizes on writing in their copies rather than reading. Therefore, the 3R's of education, remains incomplete. Moreover, teachers mainly gave importance to vernacular language rather than arts and English.

➤ **FEAR FOR TEACHER :**

In Nagaon, we came across a student with a scar on his nose. He was mercilessly beaten by the teacher for not learning a lesson. When we asked regarding complaining about it the parents

refused saying that their son may face the same situation again. Thus, the maximum children of that particular slum area refused to go to school for the fear of punishment.

➤ **PUPIL TEACHER RATIO :**

Due to irregularity of teachers in the school, we found that the pupil teacher ratio remain imbalance. Mostly, female teacher are allotted in this profession so due to their personal issues family issue or communication problem and lack of proper urban rural linkages the teachers are mostly seen irregular thus making the students lose interest in studies, making dropout increment.

➤ **INFLUENCE OF NGO :**

We could see new phenomena that we came across in our survey, where some NGO's came out in educating the slum at their own cost. As a result, this has diverted students from the SSA school to NGO's school. These have a negative effect on SSA school.

➤ **DEMOTIVATIONAL NATURE OF THE TEACHER :**

A very depressing elements that we came across in some rural school that the teacher themselves are not presentable. They have the habit of chewing tobacco in the class while teaching. This further will have negative influence on students.

**RECOMMENDATION/SUGGESTIONS :**

A study of the findings discussed earlier following is some of the suggestions to meet the challenges.

- The state government is required to show promptness for the implementation of the RTE Act. The Central Govt. should keep proper eye on it and should provide proper funds from time to time for establishment of new schools. In order avoid loopholes in this process the central government should strictly keep updates of the programme. And it any case the state government shows any apathy to release notification, then no fund should be given to state for the establishment of new schools. The state government should give commitment for the implementation of the Act.

- Primary schools with all minimum required infrastructures facilities should be established in the neglected areas on priority basis. Facilities in the existing government schools should be expanded. Mushroom growth of private schools must be controlled so that people give more interest and trust more in the Government school.

- So to meet the increasing demand of qualified and trained teachers, the teacher in required number must be recruited and properly trained at the earliest. People teacher ratio must be maintained as per requirement so that there is improvement in the quality of education.

- The bottle neck of the administration should be removed in order to faster implementation of the Act. An integrated approach should be adopted linking education with 'Child- Care', nutrition and 'Health'.

- An awareness rising programs relating to Act should be formulated timely in rural and slum areas.

- Well qualified and highly motivated teachers are necessary to give impetus to the teaching leaning process. Moreover, teachers must be capable of creating a friendly atmosphere so that teaching and learning becomes both reciprocative and spontaneous. Therefore, top priority must be given to the quality and content of teacher education programme .

- The state the central, local authority NGO's as well as the educated masses of the society will make a mark differences in meeting the challenges of implementing the awareness of Right to Education Act.

- To achieve the goals of free and compulsory elementary education in the nook and corner of the society especially in the deprived areas. "Slums" areas need utmost importance to develop the curriculum that is responsive to the changing needs and facilities. Thus, the curriculum must incorporate the integration of new content areas related to science, technology, population and the environment.

- The educational framework must be framed in such a way

so that the children with delinquent nature can be mainstreamed and this can be done with the best use of vocational education.

- Discipline created in schools make a student discipline in life so indiscipline created by students must be checked by adopting a fresh look into the matter.

- The practice of cleaning of schools, classrooms must be adopted as one of the learning object of the students. Such type of activity will not only help in the personality development of the students but also help in cleanliness of their own surrounding. This will also help in making the slums, healthy and hygiene.

- In order to lessen the dropouts rates in the school, the infrastructure of the school and the adoption of advance and modern techniques must be adopted which includes audio-visuals, teaching methods, standards indoors and outdoors games, proper library, auditorium for extra curriculum activities etc making the teaching learning a lively and comprehensive and the girls must be provided with the common rooms facilities.

- Students must not be given psychological pressures for learning which make the students fear of those teachers, thus creating more indiscipline to some extent.

### **CONCLUSION :**

India is a country which provide for a constitutional guarantees for free and compulsory education making it a fundamental right for every child. In order to meet the challenges which we have discussed above and overcoming the hurdles that stand in the way of fulfilling the act, it is the rightful duty of every citizen of India to work with full dedication and commitment to make act the successful. For this it is not only the central and the state government but it is the response as a whole to stand hand in hand in this regard. For this community participation and support with agencies and functionaries will help in achieving the goals. Government funds must be fruitfully utilized so that not only the affluent classes of the society are benefited but the weaker or the deprived sections of people will benefit out of it and thus forming a

classless educated masses. Though we didn't find much differences in our comparative analysis between urban and rural area but still there is no doubt that SSA to a great extent have fulfilled the Right to Education Act as the literacy rate has increased making Right to Education a " Reality" but lack of quality education make it's a " Myth".

**NOTES :**

i) Education : The process of receiving systematic instruction especially at a school or university.

ii) Right to Education Act. : The Right to Education Act is an of the Parliament of India enacted on 4<sup>th</sup> August'2009, which describes the modalities of the importance of free and Compulsory education for children between 6 and 14years in India constitution.

iii) Sarva Shiksha Abhijan (SSA): Sarva Shiksha Abhijan (SSA) is Govt. of India's flagship programme for achievement of Universalization of Elementary Education (UEE) in a time bound manner as mandated by 86<sup>th</sup> amendment to the constitution of India making free and compulsory education to the children of 6-14 years age group a fundamental right.

**BIBLIOGRAPHY :**

1. National curriculum frameworks 2005 NCERT, New Delhi.
2. Seventh all india school education Survey, provisional statistics NCERT. New Delhi , Sept'30,2002.
3. Dropout to learners: The challenge of The Right of Education Act'2009. Vemala Veeraghaven
4. The urban review - Stephen Ball and Geog Wekitty.
5. WWW.sert.cg.govt.in.
6. Google. Com Right to education Wikipedia
7. WWW. Oxford. Exchange.pp.in.



# **Human Rights: Role of the State and Indian laws**

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## ***ABSTRACT :***

The term "Human Rights" refers to those rights that are based on mankind's increasingly demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. These rights enable individuals to fully use their intelligence, talent and conscience to satisfy their spiritual and other needs. But such ideas and elaborations of human rights of human beings have gradually transformed in to written forms and less in practice. Infact, the scope of human rights are becoming narrower in its applications. In the political system of many Countries where 'slavery' is in the mainstream level, rights existed only for the "citizens" and not for the majority who were referred to as "slaves". Towards the mid- nineteenth century within the industrial capitalist class ,there has been improvement in the economy bettering the lives of the people from economic and social side in the entire North America and Europe, moving towards larger freedom both politically and economically, leaving the rest of the countries to be the victims of colonial exploitation. The League of Nations accepted in its Covenant the obligation to secure and maintain fair and humane conditions of labour for men, women and children which can be hardly seen after its application. The quest for equilibrium, harmony, knowledge and the respect for the human rights has been central to India's cultural heritage. But the

question is whether these rights are properly being implemented? And if implemented what are its effects? The implementation of such rights as a whole has been narrowing down and the consequences of this violation are far and wide in the state, wherein the process of development has not been able to yield the desired results to the entire human race. The violation of such rights can be seen in the Indian context pertaining to emerge issues like-gender discrimination, feminism, racial discrimination caste biased society etc. Proper measures should be adopted by the state to protect human rights from violation and misuse.

### **INTRODUCTION :**

The term Human Rights refers to those rights that are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. These rights enable individuals to fully use their intelligence, talent and conscience to satisfy their spiritual and other needs. But such ideas and elaborations of human rights have been gradually transformed into written forms and less in practice. Infact the scope of human rights are becoming narrower in its application. While towards the mid nineteenth century there has been improvement within the industrialist capitalist class, in North America and Europe spreading the freedom both politically and economically. On the other hand many parts of the globe were under the colonisation process, continued to be victims of colonial exposition. The implementation of such rights as a whole has been narrowing down and the consequences of this violation of rights is far and wide, in the state where the process of development has not been able to yield the desired result into the entire human race.

### **INDIAN LAWS AND STATE'S VIOLATION :**

The forming of the constitution of India has started about two years before the universal declaration of Human Rights was adopted. Each article of the universal declaration is reflected in the Indian Constitution which was adopted by India's constituent Assembly on 26<sup>th</sup> November 1949, and law. These laws remained as

laws in the state and the violation of such laws can be seen in the state pertaining to emerge issues like gender discrimination, feminism, racial discrimination, caste biased society etc. In India human rights in an issue complicated by the country's large size and population, widespread poverty, lack of proper education and its diverse culture, even though being the world's largest sovereign, secular, democratic republic. Though the constitution of India provides for fundamental rights, freedom of religion, freedom of speech etc but the entire country could not yield a desired result after the implementation of these rights. Free speech has come under attack both from the state and by interest groups. The Indian constitution offers all citizens individually and collectively, some basic freedoms. These are broadly divided into 6 broad categories of fundamental rights, which are justifiable. Article 12-35 contained in part-III of the constitution deal with the fundamental rights. These are, right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste sex as place of birth, and equality of opportunity in matters of employment. Through these rights were offered by the Indian constitution, human race to some extent or the other were debarred from enjoying the rights. Broadly speaking, India is a home to the largest number of sexually abused children in the world. About 53% of children have been subjected to same form of sexual abuse. In 2012, India introduced the Protection of Children from Sexual Offences Act (POCSO) to deal with cases of child sexual abuse. However it took many years to accord the first cases under the law and there are huge gaps in its implementation. It is also seen and argued that the prevalence is driven by reluctance to expose the relatives who are often the abusers. As a result these victims wanted the matter to stay within the family only and only a few wanted harsh punishments from the offenders. While sexual violence has become a major issue in the state, On the other hand India has the highest number of people living in conditions of slavery, most of them are in bonded labour where a person pledges himself or herself against a loan, including child labour too.

The preamble of our constitution vows to embody India into a secular sovereign state and also ensure to all its citizens justice, social, economic liberty with equal states and opportunity. Hardly it can be seen that India is a secular state offering its citizens equal states and liberty. Communal violence in India has become a part of its citizens everyday life. Communal conflicts between religious groups have been prevalent in India since around the time of this independence till today. Mention must be made of the Gujrat riot on the Ayodhya Babri Masjid issue where four coaches of a train have been fired leading to several deaths of the Hindu people. Moreover, many of the indigenous people known as the scheduled tribes or tribes continue to face discrimination, exclusion and acts of communal violence. Though laws and policies adopted by the India Govt. provide a strong basis for protection but are not faithfully implemented by the local authorities. Over four people per day die while in police custody, with hundreds of those deaths being due to police use of torture.

#### **REMEDIAL MEASURES TO PROTECT HUMAN RIGHTS :**

India had shown keen interest in the past in establishing or strengthening a national institution for the promotion and protection of human rights before the third committee of general assembly. In the early 1990's India felt the need of organizing a committee in the context of political unrest and violence in Punjab, Jammu & Kashmir, North East and Andhra Pradesh. In such a context the human rights commission bill was introduced in the Lok Sabha to protect the rights from violation, and soon this bill became an Act after it received the assent of the President on January 8 1994 with came to be known as the protection of Human Rights Act. This Act affirms the solemn commitment of all the states to fulfil their obligations to promote universal respect for, and observance and protection of all human rights and fundamental freedom. The World Conference on Human rights which was held at Vienna in June 1993 encourages to protect the rights from violation and assess progress in the

field of human rights. Following are some of the measures taken up by the Govt. to eradicate the violation of the Human Rights.

**RACISM, RACIAL DISCRIMINATION AND OTHER FORMS OF INTOLERANCE :**

The NHRC urges all the state to take immediate measures and to develop strong policies to combat all forms of racism, xenophobia or related intolerance, including practices of discrimination against women and to bring such evil practices to an end.

**PERSONS BELONGING TO NATIONAL OR ETHNIC, RELIGIOUS AND LINGUISTIC MINORITIES :**

The NHRC urges the states to promote and protect the rights of persons belonging to national as ethnic, religious and linguistic minorities and appropriate measures were taken to eradicate such evil practices and to ensure economic progress and development in the country.

**THE RIGHTS OF THE CHILD AND FREEDOM FROM TORTURE :**

The commission urges the state to promote measures on reducing infant mortality rate, reducing malnutrition and illiteracy rates and providing access to safe drinking water and basic education. Exploitation and abuse of children should be actively combated. Effective measure were also taken by this commission to eradicate female infanticide, harmful child labour, child prostitution, child pornography as well as other forms of sexual abuse.

**FREEDOM FROM TORTURE :**

The world conference on human rights therefore urges all states to put an immediate end to the practice of for here, forced prostitution, discrimination and violation against women and eradicate these evil practices for ever through full implementation of the effective measures wherever necessary, thereby strengthening all existing mechanisms.

Governments with the assistance of intergovernmental organizations, national institution and nongovernmental organizations should promote an increased awareness of human rights and mutual tolerance.

**BIBLIOGRAPHY**

1. Yasin, Adil; Upadhyay Archana "Human Rights", New Delhi, 2004.
2. Dr. Agarwal H.O.; 'Concise Book on International law and Human Rights'; Central law publication, New Delhi; 2007.
3. Kalita, C. Tapan 'Contemporary Political Issues' Panbazar, 2008



# **Witch Hunting as a Violation of Basic Human Right – A Study With Special Reference To Tribal Women**

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## **ABSTRACT :**

This paper brings out the sociological perspectives underlying the evil practice of witch hunting. Even after so many years of Independence, light of education has not yet reached to a section of people to bring them out of the clutches of superstition. The victims of this evil practice are denied of their very basic human rights and tortured both physically and mentally. The paper tries to bring to light at the different dimensions of the society responsible for such heinous crime. The paper further highlights why women are easy scapegoats for witch hunts. The vulnerability of women in this social evil is much higher than men. To find the reasons behind this we must understand the social position women hold in that society. Almost all the cases taken up in this paper are based on women. This paper deals with the different tribal communities of Assam which again are vulnerable to such superstitions due to their ignorance and lack of education. Another significant debateable question the paper deals is that - Is there a need of a special law for witch hunting? Various government and non- government organisations like Assam State Commission for Women, Assam Mahila Samata Society (AMSS), Partners for Law in Development (PLD) and North East Network (NEN) has been engaged in process of eradicating this social evil. A critical assessment of the workings of these organisations is important aspect of study in this paper.

### **INTRODUCTION :**

“The villagers accused me of killing my own brother by poisoning him. They also said there are other people whom I killed and that I will kill five more. They said that I am a witch”. These were words of Kati Taro who has been branded as a witch. Her words don't correspond to the modern techno savvy world we are living. It is beyond one's imagination how someone can accuse a woman as a witch. But unfortunately this is the bleak reality of many interior villages of Assam. Witches are identified as those who uses supernatural powers to bring misfortune and harm the people and property. Witch hunting involves branding of women as witch. The witch is identified the ojha or bej who are the local healers. The history of witch hunting can be traced back to the classical period of 14th century across Europe, Africa and Asia. Joan of Arc was such an example. He was built alive at the age of 19 at the stake for heresy on May 30, 1431. In India it dates back hundreds of years. It is interesting that Morigaon has been titled as the “Indian Capital of Black Magic”.

### **SCOPE OF THE STUDY :**

The National Crime Records Bureau (NCRB) claimed that 798 women were murdered after being accused as 'witch'. According to the Ndtv report of ScptclnbcR 2013 there are about 105 cases of Witch hunting between 2006 -2012. These figures reveal the gravity of this social evil. To eradicate this malicious act of superstition we need to look at community from different dimensions. We need to get holistic view of the socio econoinic structure of the society which is responsible for such superstition. This topic is often overlooked by people because of its sensitive nature. This is because of the fear existing in minds of these people. Assam with its variety of tribes has been a witch prone state. The tribal people of Assam mostly interior places like Sonitpur, Kokrajhar, Goalpara are ignorant. This makes them vulnerable to such social evils. Therefore, it is pertinent to have a critical view at structural, individual and geographical factors which are responsible for witch hunting.

## **METHODOLOGY :**

This paper is based on second hand research which includes journals and text. Mostly reports of various organisations like Assam Mahila Samata Society (AMSS), North East Network (NEN) has been used to get a insight about the witch hunting cases of Assam. Reports of certain newspapers have also been taken into account. The focal point of the paper is to bring to light the social structure resulting such crime.

## **REVIEW OF LITERATURE :**

The following literature and journal provided much resource that helped me in the paper:**1) The Practice of Witch hunting : A call for its Abolition** - The report has been written by Anjuman Ara Begum and the field work done by Assam Mahila Samata Society (AMSS). The report is based on real life experiences of the victims of witch hunting. A consultation on Witch hunting was held on 10th Dec. in view of International Human Rights Day.

**2) Witch Hunting In Assam: Individual, Structural and Legal Dimensions** - A report in collaboration of Partners for Law in Development (PLD), Assam Mahila Samata Society (AMSS) and North East Network (NEN). This paper highlights the different dimensions and socio economic structure in understanding of the problem of Witch hunting.

**3) Witch- hunting in India? Do We Need Special Laws?** A research paper by Madhu Mehra, Anuj a Agarwal. The paper gives a critical understanding of the Special Law enacted for prohibition and abolishment of Witch hunting. Is this Special Law enough to tackle the problem of witch hunting ?

**4) Women as Easy Scapegoats: Witchcraft Accusations and Women as Targets in Tea Plantations in India** - The article is written by Soma Chaudhuri where she took up the question why women are primary targets in witchcraft. She also deals with the social position of women among tea tribes.

**5) Women as Witches and Keepers of Demons** - This article written by Dev Nathan, Govind Kelkar, Yu Xiaogang deals with the

gender struggle. It gives a peek to how men uses witch hunting to establish their domination.

**6) Who will hunt the witch hunter ?** - This article was published in The Assam Tribune written by Parbina Rashid. This article gave an understanding of witch hunting prevalent in Assam.

### **BELIEF SYSTEM REVOLVING AROUND WITCH HUNTING :**

It would be wrong to say that each part of India is equally developed. There are regions where the light of development has not yet reached and people there are deprived of basic needs of education and healthcare. This weak development indicator no doubt contributes to the superstitious beliefs and evokes fear of supernatural power in the minds of people. People in those areas are more reliant on the local faith healers than medical science. The belief that witch is the cause of drought, disease, death of children and livestock is very common and Assam is no different. If we have a microscopic view we will find there are numerous tribes and communities where such beliefs still prevail. The witch or its assumed vocabulary "daini" is seen as someone who uses magical powers to bring evil to the community or to any person. The faith healers or the local ojhas detect and identify the witch. Ronald Hutton identified five characteristics shared by the people who believe in witchcraft-

- Witches use non physical power to bring misfortune to the community
- Harm is usually caused to the persons known like the neighbours rather than unknown
- Strong social disapproval as the malice and spite is the motive
- Witches work in a long standing tradition rather than one time context
- Other people can resist witch through persuasion or counter magic. There are numerous ways used by the local ojha to detect a witch.

One of such methods mentioned in a report of Assam Mahila

Samata Society (AMSS) is that the patient is covered in a net and pricked with thorns and other sharp objects till it becomes unbearable. In that pain the patient reveals the name of the accused. Another aspect that was revealed during the fieldwork was that if a person was suffering from any mental illness the community branded that patient as a witch. What is more painful is the physical and mental torture which is meted to the accused. The victim is isolated from the rest of the society and many a time the accused is killed. A shocking revelation made by Sri Kulo Saikia, IGP who worked for this issue during his service at Kokrajhar to the AMSS is that after killing the accused, her body is cut into pieces and buried separately. It was because the people believed that if was buried together then it may lead to rebirth of the witch. Moreover it was just not the victim but at times the whole family and those supporting the victim were killed. All the belongings and property of the family was taken away by the people.

#### **WOMEN AS EASY SCAPECOATS FOR THIS EVIL SUPERSTITIOUS CRIME :**

One of the pertinent points of discussion in this paper is why women are easy targets for witch hunting. Gender relations no doubt play a pivotal role in this heinous crime. Patriarchy contributes to the vulnerability of women. When we look at Assam, we find a number of tribal communities where the social position of women is too low. Women in these tribes still not have decision making power. Witch hunting is a crime which exemplifies male oppression on women. Categorising of women as witches shows has been a common in these tribes. What makes women vulnerable? Many social scientists came up with the view that in these tribes women are considered weaker than man making her more susceptible to the advances of the devil. Soma Chaudhuri in her article "Women as Easy Scapegoats: Witchcraft Accusations and Women as Targets in Tea Plantations of India" observed that tribe I women enjoy greater sexual and economic freedom compared to the majority hindu women. She did her field study among the tea tribes where the women are wage workers. Women were paid less than men. But it is

interestingly both men and women had freedom to select their marriage partner and can have a succession of monogamous marriage. Chaudhari further asserted that one thing that women did not have was the public decision making power, Women have no role in day to day activities in the communities, during conflicts and in rituals. This social position of women is critical to the issue of witch hunt. There is a certain kind of male ego that works through this process. Turning down sexual advances of men or superseding men in power hierarchy challenges this male ego. This leads the man to use the fear of witch to bring her down. Widow or single mother have a higher risk of being a victim of this social evil. Caste of the women also serves as a factor for determining her social position. The demography of Assam consists of many indigenous tribes like Karbi, Dimas, Rabha kachari, deori, mising, khamti, tiwa, phakial. People belonging to these tribes are at higher risk of becoming a victim of superstition so as the women of these tribes. Thus we can assert witch hunting as clear cut gendered violence.

#### **CONSEQUENCES OF THE VICTIMS OF WITCH HUNTING :**

What happens after the woman is branded as a witch? The physical and mental humiliation that she has to go through is traumatic. The basic human right of the accused is brought to question. It is further observed that this torture and threat to life is not only limited to the victim but it extended to their family too. Mother Therefore we find that the number of killings is much greater than those accused. They are denied their right to life. In most cases an isolated private killing takes place which is a domestic crime and the state hardly takes the responsibility. It is seen that this issues are often taken up to the decision making body which constitutes the elderly persons of the community. There a decision is taken. If any accused dared to defy their decision then a further action will be taken which will be more traumatic. Some of the extreme results of witch hunting are -

**Physical abuse** - The victim has to go through inhuman physical suffering. At times a women victim is raped, beaten up and made to walk through the streets nude.

**Loss of social support-** The accused and her family is boycotted by the rest of the community people. This makes their life difficult in each day. Thus results in forced migration.

**Family split** - When the woman is accused to be a witch her family breaks. Not only community she has to leave her family to at times. This leaves her further insecure

**Social stigma** - Social life of the woman is hampere because of the social stigm, attached to the accusation.

**Psychological imbalance** - Due to isolation and ill treatment the woman mental balance is put at stake making her mentally weak.

**Property Loss** - The accused losses all her property at the hands of some greedy people. This section of people manipulates the decision of the community for monetary gain.

**Lack of guidance to their children** - As their parents are victims of superstition children also suffer. Due to this social evil as they are deprived of proper guidance.

### **SOME OF THE CASES OF WITCH HUNTING AMONG THE TRIBES OF ASSAM :**

The number of cases or witch hunting has been increasing in the recent times. To find the critical sociological prespective of this evil it is pertinent to get some insights of some real life cases and responses of the family members, relatives and neighbour. Some references of cases of Assam are enumerated below:

1) Kati Taro, a middle aged woman was about to be killed by a number of villagers as she was branded as witch. The local ojha held her responsible for the death of her brother. The village court declared that no one in the village will have any social ties with their family. She further said to the news correspondent that she had been held responsible for killing other fellow villagers along with her brother. The villager also feared that she may kill more people.

2) Phuleswari Halowa, a 55 year old woman was burnt alive by resident of a village near Sibsagar after branded as witch.

3) Another case forwarded by Assam Mahila Samata Society was of Rashmi Rabha, a resident of Jurigaon village in West Garo Hills. Her nephew had a eye on the property so he confiscate the villagers that they were practicing witch craft. As a consequence she along with her daughter was humiliated and they had to leave the village.

4) Khedai Bala Rabha, fell in prey of a similar conspiracy where a group of people wanted to seize her property i.e her home and a small piece of land.

5) Anima Basumatary, another victim of witch hunting was killed by the villagers of Ganeshpur on being accused as a witch. Further her family was humiliated and evicted from the village.

6) Puni Orang of Bhimajuli was killed by an enraged group of villagers. She was branded as a witch by Anima Ronghangpi who claimed herself to be a goddess and fortune teller.

7) Lakshmi Gaur, 45 year old lady of Milanpur of Sonitpur district was killed after being branded as witch. The villager after committing this crime buried her body in jungle. Fortunately, police were successful in getting hold of wrong doers and put them behind the bars.

8) Bhuleswari Rabha was branded as a witch and was held responsible for a neurotic disease of a lady. She had to leave the village and then AMSS looked into the matter and prevented injustice.

9) Anita Rabha faced similar situation. A boy suffered from hydrophobia due dog bite but illiterate villagers held her responsible. AMSS rescued the victim here too.

10) Sirani Rabha was tagged a witch as one person fall sick after having the rice beer she gave. Later on it was found that the person was having high blood pressure.

#### **ROLE OF GOVERNMENT AND NON GOVERNMENTAL ORGANISATION:**

The role of the Government and Non Government Organisation (NGO) is very important in order to bring a change in the scenario. There have been mushroom growths of NGOs who are working to eradicate this violence and injustice done to women. But only a

handful of them are able to rescue the victims.

Human Rights being a subject of State the role of State Government are undeniable. States like Jharkhand, Chattisgarh and Bihar were the first to come up with special laws for prevention of witch hunting. The Prevention of witch (Daain) Practices Act 1999 was enacted in Bihar and subsequently Jharkhand adopted a similar law. The Prevention of Witch Hunting (Dayan Pratha) Act 2001. Lastly Chattisgarh enacted Witchcraft Atrocities Prevention Act 2005 (Tonahi Pratadana Nivaran Act 2005). In Assam The Assam Witch hunting (Prohibition, Prevention and Protection) Bill was passed. This bill highlighted the course of action for rescue and protection. The Guwahati High Court first instructed for such a bill. The bill at first proposes punishment for 3 years. Finally the Assam Witch Hunting (Prohibition, Prevention and Protection) was enacted. Some of the basic points of this bill is outlined below :

- It aims to eliminate superstition from society by making the offences non bailable, non compoundable and cognizable.
- Prohibiting any person from calling, identifying and defaming any person as witch by words, signs and conduct.
- If anybody is found guilty, he or she will be held in jail for 7 years and fine upto 5 lakh rupees. The provision is placed at section 302 of Indian Penal Court.
- Additionally if someone blames any person for a natural disaster then he or she will be held in jail for 3 years.
- Special courts will be set for in consultation with the high court for trial of such offences.

But the assumption that one such special law for curtailing superstitious law is sufficient is questionable. The State must look beyond the gaps of the law taking into account the need of a diverse state like Assam.

Another autonomous organisation working for these evils of superstition is Assam Mahila Samata Society (AMSS). North East Network (NEN) a NGO also has been taking steps to eradicate this evil and rescue and rehabilitate the victims. Project Prahari, which came into being in 2001 was initiated by Assam Police under the

guidance of Kuladhir Saikia. Activist under this banner has been constantly trying hard to bring awareness among the people of Assam.

### **ARGUMENTS AND FINDINGS :**

To bring people out of the dark beliefs of superstition is complex task. There is a class of people who are ignorant and unaware. There is another section which manipulates these ignorant people for their selfish motive. They use fear of these ignorant people as weapon. This ignorant people lack education which has crippled their logical understanding power. They fail to decide what is right and what is wrong. This ignorance points the low socio-economic development of the region. All the above given cases are of ignorant tribal community unaware the ideals of our constitution.

Witch hunting can be seen as a gendered violence as women are the primary targets. Men are mostly the collateral targets of these crimes. Even children are not spared of this evil. In most of the cases it is seen that the mother is accused as witch then the husband and children also has to face the consequence. We can categorize these superstitious acts as way to suppress women and establish men domination. The word witch itself brings the image of a evil women using black magic to destroy the world. It has been very easy to tag women as witch.

There are a number of underlying problem which makes it difficult to remove the problem. One of them is that the entire community is involved in this crime. This stands as a hurdle to catch the defaulters. Secondly due to the social stigma attached to it most of the cases are not even reported. Thirdly the victims get no help from the family from anyone. It is because they fear of getting victimized.

The cases which are brought to light in this paper reveals how the accusers plots a conspiracy to brand someone a witch for personal motive. On one hand their are the land mafia who want to take over the land and on the other their is are lustful eyes trying to crush a woman's dignity. Greed, jealousy and revenge drive people

to get involved in this heinous crime.

The atrocities done to the victim is in human. Apart from physical tortures the victims are isolated from the rest of the community and cut out of all the social ties. These bring down the self esteem of the people. As result the victim suffers from mental imbalance and depression. How media throws light into issues of witch hunting also has a deep impact on the minds of the victim. Media being the fourth pillar of democracy has a ethical duty to show the reality to the audience and show some sympathy to the victim rather than sensationalising the news.

#### **CONCLUSION :**

This bleak reality of society makes one question the modernisation of the society. Today when one section of people is being paralysed by the digital world there is a section that still lives in the darkness of illiteracy. It is no doubt a tough work to break this belief system surrounding the different communities of Assam. Only a continuous effort of the government, enthusiastic youth in collaboration of NGO and powerful media can bring this social change. It is high time that we need to sweep away the evils of superstition and make world a better and secure place to live in.

#### **BIBLIOGRAPHY :**

- Begum Anjuman, The Practice of Witch hunting - A Call for its Abolition
- North East Network, Witch Hunting in Assam: Individual, Structural and Legal Dimensions
- Chaudhuri Soma, Women As Easy Scapegoats: Witchcraft Accusations and Women as easy Targets in Tea Plantations of India
- Nathan, D, Kelkar, G. & Xiaogang, X Women as witches and keepers of demon.
- Mehra Madhu, Agarwal Anuja, Witch Huting in India? Do we need Special Laws?
- Rashid Parbina, who will hunt the witch-hunter ?



## **Public Interest Litigation in protection of human rights in two villages of Nagaon District**

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### **ABSTRACT :**

The Supreme Court of India developed a procedure in the early 80s which enables any public-spirited citizen or a social activist to mobilize favourable judicial concern on behalf of the oppressed classes. Public Interest Litigation (PIL) is the medium through which access to justice has been democratized in India. PIL is the product of distinct social, historical and political forces and is totally home-grown. It evolved basically to protect the human rights of the poor, the oppressed and ignorant people who due to lack of resources and knowledge, were unable to seek legal redress. It emerged as the most extraordinary innovation in the Indian Judicial Process, which has no parallel in the world.

National Human Rights Commission (NHRC) came into being through an ordinance promulgated on September 28, 1993. The function of the Commission is to inquire into complaints of violation of human rights. It can also intervene in a judicial proceeding involving allegation of human rights violations, visit any state institution, promote research on human rights, spread human rights literacy, encourage social activism, and review existing human rights laws and recommend measures for their effective implementation. The Commission enjoys the powers of the

civil court while inquiring into the complaints under the Act. It enjoys investigative power and can utilize services of any governmental investigative agency. There is also a State Human Rights Commission in Assam. Our paper is an attempt to understand the working of the PIL and NHRC and at the same time study about their awareness among the common people in two villages of Nagaon district.

**Key Words:** *Public Interest Litigation. National Human Rights Commission, Human Rights Protection.*

### **INTRODUCTION :**

Public Interest Litigation (PIL) is litigation for protection of public interest. Article 32 of the Indian Constitution contains a provision which helps in connecting the judiciary with the public. A PIL may be introduced in a court of law by the court itself rather than the victimized party or another third party. In a PIL, the right to file suit is given to a member of the public by the courts through judicial activism. The member of the public may be a non-governmental organization (NGO), an institution or an individual. The Supreme Court of India has slated that the judiciary has stepped in to give direction and protection to Human Rights because due to executive inaction, the laws enacted by Parliament and the state legislatures for the poor since independence have not been properly implemented. The concept of PIL is in consonance with the principles enshrined in Article 39A of the Constitution of India to protect and deliver prompt social justice with the help of law. Before the 1980s, only the aggrieved party could approach the courts for justice. After the Emergency era the High Court reached out to the people, devising a means for any person of the public (or an NGO) to approach the court seeking legal remedy in cases where the public interest is at stake. Justice P.N. Bhagwati and Justice V.R. Krishna Iyer were among the first judges to admit PILs in court. Filing a PIL is not as difficult or cumbersome as a usual legal case; there have been instances when letters and telegrams addressed to the court have been taken up as PILs and heard. Prof. Upendra Baxi, one of India's foremost

legal scholars, preferred to describe this legal phenomenon as "Social Action Litigation", which was designed to be used only as an instrument of social change to cases genuinely on behalf of the victimized and oppressed classes. According to Baxi, American PIL was not so much concerned with State repression or governmental lawlessness or with the problems of the rural poor, but they concentrated more on issues like "Civic participation in governmental decision-making" and with consumerism and environment. He feared that the Indian PIL might also head the same way. Over the years Baxi's anxieties proved to be correct as PIL in India has overwhelmingly been appropriated for corporate, political and personal gains. Today, PIL matters focus predominantly on issues concerning environment, consumerism, governmental accountability and political governance. It is no longer limited to the problems of the poor and the disadvantaged.

The National Human rights Commission (NHRC) of India is an autonomous public body which was constituted on 12 October 1993 under the Protection of Human Rights Ordinance of 28 September 1993 and it was given a statutory basis by the Protection of Human Rights Act, 1993 (TPHRA). The NHRC is the national human rights institution, responsible for the protection and promotion of human rights, defined by the Act as "rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants. The NHRC has been accredited with "A status" by the International Coordinating Committee of National Human Rights Institutions, indicating that it is in conformity with the Paris Principles a broad set of principles agreed upon by a conference of experts on the promotion and protection of human rights in Paris in October 1991, and subsequently endorsed by the UN General Assembly. The Commission is thus entitled to participate in the ICC and in its regional sub-group, the Asia Pacific Forum, and may take part in certain sessions of the UN human rights committees.

### **OBJECTIVE OF THE STUDY :**

The objective of the present study is to understand the evolution and working of both PIL and NHRC in general and to survey two interior villages of Nagaon district to find out the awareness of human rights institutions like NHRC and PIL among the local inhabitants. Two villages under Dighaldari Panchayat of Raha in Nagaon district of Assam, namely Bamunigaon and Mudaigaon were selected for the purpose. The two villages were almost identical in terms of population, literacy rate, and access to road, technology and communication and most people fall either under BPL or APL categories.

### **METHODOLOGY :**

For the general study of PIL and NHRC, secondary sources like books on the subject and help of the internet were being sought. However, the principal investigators visited both the villages and collected samples on a random basis. A set of five simple questions regarding human rights awareness involving Public Interest Litigation and National Human Rights Commission were asked by the investigators to a wide section of the villagers comprising of the literate and illiterate, young and old as well as male and female. The total population of each village was taken into account and the educational qualification of the people of the village, like number of postgraduate, graduate, matriculate, etc, were taken under consideration.

### **EVOLUTION OF PIL :**

The British bequeathed to India colonial legal heritage. Procedural technicalities, such as locus standi and adherence to adversarial system of litigation were insisted to be observed when the Anglo-Saxon model of adjudication was followed. The result was that the courts were accessible only the rich and the influential people. The marginalized and disadvantaged groups continued to be exploited and denied basic human rights. The Emergency (1975-77) period further witnessed colonial nature of Indian legal system. During Emergency, State repression and governmental lawlessness was widespread. Thousands of innocent people, including political

opponents, were sent to jails and there was complete deprivation of civil and political rights. The post Emergency period provided an occasion for judges of Supreme Court to openly disregard impediments of Anglo-Saxon procedure in providing access to justice to the poor. The judges also wanted to refurbish image of Supreme Court severely tarnished by a judgment, given during the Emergency, which had tacitly supported the repressive regime. Notably, two justices of Supreme Court, Justice V.R. Krishna Iyer and P.N. Bhagwati, recognized the possibility of providing access to justice to the poor and the exploited people by relaxing the rules of standing. In the post-Emergency period, when political situation had changed, investigative journalism also began to expose gory scenes of governmental lawlessness, repression, custodial violence, drawing attention of lawyers, judges, and social activists. PIL emerged as a result of an informal nexus of proactive judges, media persons and social activists. The first reported case of PIL in 1979 focused on the in-human conditions of prisons and under trial prisoners. This litigation exposed failure of criminal justice system and led to a chain of proceedings, resulting in release of over 40,000 under trial prisoners.

PIL was evolved basically to protect human right of the poor, the ignorant and oppressed people who due to lack of resources and knowledge, were unable to seek legal redress. It emerged as the most extraordinary innovation in the Indian judicial process, which has no parallel in the world. Through the mechanism of PIL, the court seek to protect human rights by - creating a new regime of human rights by expanding the meaning of fundamental right to equality, life and personal liberty, by democratization of access to justice, by fashioning new kinds of relief under the court's writ jurisdiction, by judicial monitoring of state institutions, such as jails, women's protective homes, mental asylums and the like and by devising new techniques of fact-finding. Matters such as custodial violence, terrorism and insurgency, violence against women, bonded labour and juvenile children have become the hotbeds for PIL. The greatest contribution of PIL has been to enhance

accountability of governments towards human rights of the poor. The judges acting alone cannot provide effective response to state lawlessness, but they can surely seek a culture formation where political power becomes increasingly sensitive to human rights. When people's rights are invaded by dominant elements, PIL emerges as a medium of struggle for protection of their human rights.

### **EVOLUTION OF NHRC :**

National Human rights Commission came into being through an Ordinance promulgated on September 28, 1993, presumably under some foreign pressure. The Ordinance was replaced by an Act called Protection of Human rights Act 1993 which received Presidential assent in January 1994. Appointments to NHRC are made in consultation with a committee consisting of the Prime Minister (Chairman), Speaker of Lok Sabha. Minister-in-charge of the Ministry of Home Affairs, Leaders of Opposition in Lok Sabha and Rajya Sabha, and Deputy Chairman, Rajya Sabha. The NHRC consists of a chairperson, who must have been a Chief Justice of the Supreme Court; one member, who is or has been a Judge of the Supreme Court; one member, who is or has been the Chief Justice of a High court; and two members to be appointed from amongst persons having knowledge or practical experience in matters relating to human rights. The function of the Commission is to inquire into complaints of violation of human rights. It can also intervene in a judicial proceeding involving allegation of human rights violations, visit any state institution, promote research on human rights, spread human rights literacy, encourage social activism, and review existing human rights laws and recommend measures for their effective implementation. The Commission enjoys the powers of civil court while inquiring into the complaints under the Act. It enjoys investigative power and can utilize services of any governmental investigative agency. While inquiring into complaints of violations of human rights, the Commission may call for information or report from the concerned Government or any authority and satisfy itself as to the action taken by the government in the matter. It may make

its own inquiries, if there is no response from the concerned Government. After completion of the inquiry under the Act, the Commission may take any of the following steps. It may recommend prosecution of the guilty public servant; or approach Supreme Court or High court for appropriate directions; or recommend sanction of interim monetary relief to the victim or his or her family. It is, thus, clear that the NHRC has no power to take any binding decisions. It has to depend either on the apex court or High court or the concerned governments. Its recommendations have no legal weight. The Commission receives thousands of complaints from individuals and civil liberties groups and in majority of cases it calls for information or report from the concerned government. In most of the cases, it uses "post office" procedure which consists of asking State Governments to investigate the incidents of human rights violations and inform it about the action taken. In some cases, it asks CBI to investigate and report. The investigative power possessed by it is very rarely exercised. The presence of NHRC has at least made human rights violation more visible and has enhanced public awareness about human values. It has also been taking all possible steps to promote a culture of human rights through media publicity, human rights seminars and human rights education for police, paramilitary and armed personnel and in the system of general education. At times, it has drawn attention of concerned State Governments to be accountable to human rights and bring human right violators to the book.

#### **SURVEY OF TWO VILLAGES REGARDING AWARENESS OF HUMAN RIGHTS, PIL & NHRC :**

Two villages in the north-east of Raha under Dighaldari Panchayat having identical features were surveyed by the principal investigators. The villages, namely Bamunigaon and Mudoigaon are flood prone areas and the entire population comprises of the Scheduled Caste. Fishing is the main occupation of most of the villagers here. Road communication is deplorable and the distance of both the villages to Raha town is approximately 5 miles. The

following data has been collected from both the villages in terms of educational qualification:

Name of the Villages	: Bamunigaon
Total Population of the village	: 500 (Five Hundred)
Number of Postgraduate	: 1
Number of Graduate	: 8
Number of HS (10+2) pass	: 20
Number of HSLC (Matriculate)	: 50
Number of people employed in Service	: 5
Name of the Village	: Mudoigaon
Total population of the village	: 400
Number of postgraduate	: Nil
Number of Graduate	: 1
Number of HS (10+2) pass	: 12
Number of HSLC (Matriculate)	: 30
Number of people employed in Service	: 4

A total of 30 households of each village were chosen and every family had at least one member who had studied up to class X, and five simple questions on Human Rights awareness were provided to each of the families. The respondents only had to answer in a simple manner. The result of the awareness on Human rights of both the villages is given below:

Name of the Village	:	Bamunigaon				
Total Number of Respondents	:	30				
Question Asked		Q.1	Q.2	Q.3	Q.4	Q.5
Answered Correctly		4	Nil	Nil	Nil	Nil
Name of the Village	:	Mudoigaon				
Total Number of Respondents	:	30				
Question Asked		Q.1	Q.2	Q.3	Q.4	Q.5
Answered Correctly		3	Nil	Nil	Nil	Nil

#### FINDINGS :

From the survey, it became clear that majority of the people

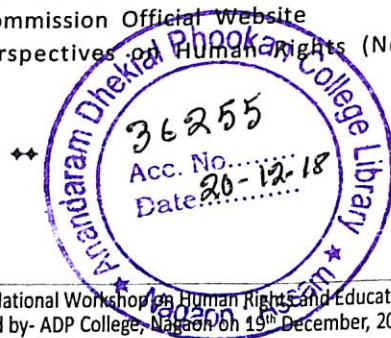
in both these villages are not aware about Human Rights institutions operating in the country as well as our state. The five questions asked in the connections were –

- Q.1: What do you mean by Human rights?
- Q.2: What is the full form of PIL?
- Q.3: What is NHRC?
- Q.4: What is State Human Rights Commission?
- Q.5: Where is the State Human Rights Commission located in Assam?

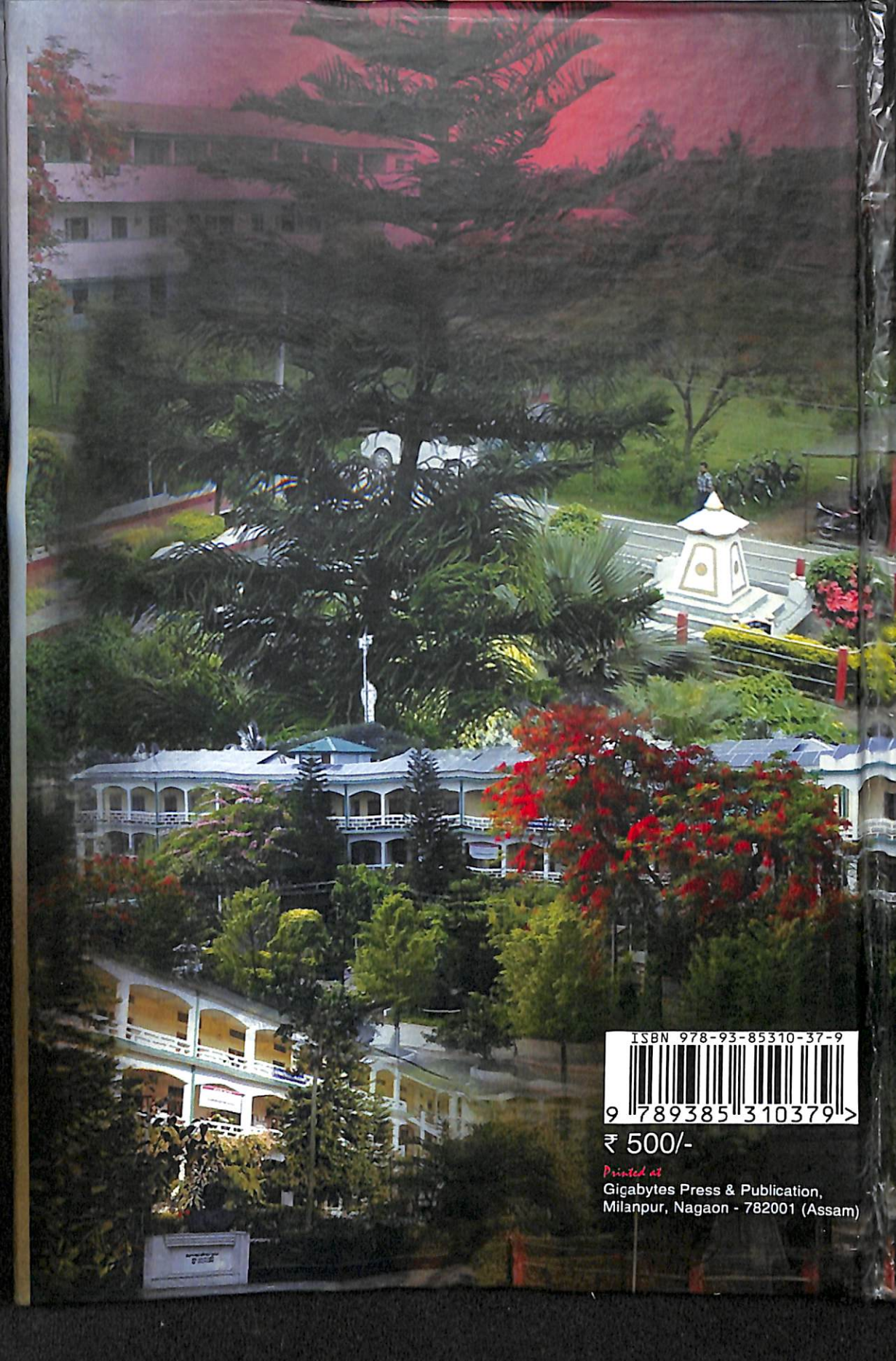
Only 4 respondents from the first village and 3 respondents from the second village could answer Question Number 1 satisfactorily. However, none of the respondents could give answer to the other questions. It clearly indicates that Human Rights awareness among the rural masses, especially in the villages near Raha of Nagaon district is still poor. In spite of availing school/college education, majority of the villagers are in the dark regarding National Human Rights Commission and Public Interest Litigation.

**REFERENCES :**

1. Upendra Baxi, "Taking Suffering Seriously: Social Action Litigating in the Supreme Court in India" in Upendra Baxi (ed.), Law and Poverty, 1988
2. Parmanand Singh, Human rights Protection Through Public Interest Litigation in India, 1999
3. Cunningham, Clark D. "Public interest litigation in Indian Supreme Court: a study in the light of American experience." Journal of the Indian Law Institute 29 (1987)
4. Wikipedia: Public Interest Litigation
5. Wikipedia: National Human Rights Commission
6. National Human Rights Commission Official Website
7. Abdulrahim P.Vijapur, Perspectives on Human Rights (New Delhi: Manak, 1999)







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